TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 423

ISABELLA F. BLACKSTONE, INDIVIDUALLY AND AS EXECUTRIX OF THE LAST WILL AND TESTAMENT OF TIMOTHY B. BLACKSTONE, DECEASED, PLAINTIFF IN ERROR,

vs.

NATHAN L. MILLER, COMPTROLLER OF THE STATE OF NEW YORK, AND EDWARD M. GROUT, COMPTROLLER OF THE CITY OF NEW YORK.

IN ERROR TO THE SURROGATE'S COURT OF NEW YORK COUNTY, STATE OF NEW YORK.

FILED AUGUST 12, 1902.

(18,651.)

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a The People of the State of New York, by the grace of God free and independent, to all to whom these presents shall come or may concern, Greeting:

Know ye, that we, having examined the records and files in the office of the surrogate of the city and county of New York, do find there remaining, a certain record of the notice of appeal, papers, order and decree, in the matter of the appraisal under the act in relation to taxable transfers of property of the property of Timothy B. Blackstone deceased, (together with papers on remittitur, said papers with the originals thereof being all the papers upon which said order and decree was made) in the words and figures following, to wit:

[New York Surrogate's Seal.]

b Court of Appeals.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Appellant;

COMPTROLLER OF THE CITY OF NEW YORK, Respondent.

Papers on Appeal.

Edward W. Sheldon, attorney for appellant, No. 45 Wall street, Manhattan, New York.
Julius Offenbach, Esq., attorney for respondent.

1 *Order Appointing Appraiser, Read on Behalf of Respondent.*

At a surrogate's court of the county of New York, held at the county court-house in the county of New York on the 12th day of November, 1900.
Present: Hon. Frank T. Fitzgerald, surrogate.

In the Matter of the Transfer Tax upon the Estate of TIMOTHY B. BLACKSTONE, Deceased.

On reading and filing the petition of Hon. Bird S. Coler, comptroller of the city of New York, bearing date and verified the 10th day of November, 1900, I do hereby, pursuant to the requirement of chapter 658, of the Laws of 1900, direct Charles B. Paige, one of the appraisers appointed by the State comptroller under said statute, to fix the fair market value at the time of the transfer of the property which was of the above-named decedent, and which is subject

to the payment of any tax imposed by article X, chap. 908, Laws of 1896, and the acts amendatory thereof, and supplemental thereto.

FRANK T. FITZGERALD, *Surrogate.*

Original filed Nov. 12, 1900.
A true copy.
J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.
[SEAL.]

10-cent rev. stamp.

2 *Petition for Foregoing Order, Read on Behalf of Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Transfer Tax upon the Estate of TIMOTHY B. BLACKSTONE, Deceased.

To the surrogate's court:

The petition of Hon. Bird S. Coler respectfully shows:
I. That he is the comptroller of the city of New York.

On information and belief.

II. That on or about the 26th day of May, 1900, Timothy B. Blackstone, then residing without the State of New York, was seized and possessed of property in the city and State of New York, subject to taxation under the act in relation to taxable transfers of property, to the value, and upwards, of ten thousand ($10,000.00) dollars, and that on said 26th day of May, 1900, said decedent departed this life.

III. That said decedent died, leaving a last will and testament, and that thereafter, and on or about the 20th day of June, 1900, letters testamentary were duly issued by the probate court of Cook county, Illinois, to Isabella F. Blackstone.

IV. That said property, or some part thereof, is subject to
3 the act in relation to taxable transfers of property. That no payment of such tax has been made, and that no proceeding has been brought to fix and determine the same by the representatives of said decedent, although said property has been, or is about to be, removed from the State of New York without the payment of said tax. That no application for letters ancillary, or otherwise, has been made by the representatives of said decedent in New York county.

V. That all the persons who are interested in the said estate, and who are entitled to notice of all proceedings, and their addresses are as follows:

Comptroller of the city of New York, 280 Broadway, borough of Manhattan, city of New York.

Isabella F. Blackstone, 252 Michigan avenue, Chicago, Ill.

Wherefore, your petitioner prays for the appointment of some competent person as appraiser, as provided by law.

Dated New York, November 10, 1900.

BIRD S. COLER.

COUNTY OF NEW YORK, *ss.:*

Bird S. Coler, being duly sworn, deposes and says: That he is the comptroller of the city of New York. That he has read the foregoing petition and knows the contents thereof. That the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

BIRD S. COLER.

Sworn to before me this 10th day of November, 1900.

JULIUS MEYERS,
Notary Public, N. Y. Co.

4 *Notice of Appraisal, Read on Behalf of Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

You will please to take notice that, by virtue of an order of Hon. Frank T. Fitzgerald, one of the surrogates of the county of New York, made and dated the 12th day of November, 1900, and pursuant to provisions of chapter 908 of the Laws of 1896, relating to taxable transfers of property, and the acts amendatory thereof, I shall on the 12th day of December, 1900, at 11 o'clock in the forenoon of that day, at room No. 1403, Home Life building, Nos. 256 & 257 Broadway, in the borough of Manhattan, city of New York, proceed to appraise at its fair market value all the property of said Timothy B. Blackstone, deceased, late of the said city, passing by his last will and testament or by the intestate laws of the State of New York, which is subject to the payment of the tax imposed by the said act and the acts amendatory thereof.

And such of you as are hereby notified as are under the age of twenty-one years, are required to appear by your guardian, if you have one, or, if you have none, to appear and apply for one
5 to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the surrogate to represent and act for you in the proceeding.

New York, December 3d, 1900.

CHARLES P. PAGE, *Appraiser.*

New York, December 3d, 1900.

CHARLES B. PAGE, *Appraiser.*

To Hon. Bird S. Coler, comptroller, 280 Broadway, borough of Manhattan, New York city. Julius Offenbach, Esq., attorney for comptroller, 27 & 29 Pine St., borough of Manhattan, New York city. Isabella F. Blackstone, 252 Michigan avenue, Chicago, Ill.

CITY AND COUNTY OF NEW YORK, *ss.*:

Thomas P. Kelly, being duly sworn, says: That he is over 18 years of age, and that on the 3d day of December, 1900, he deposited in the post-office, at the city of New York, a copy of the foregoing notice, contained in securely closed postpaid wrappers, directed to each of the above-mentioned persons, respectively, at the address set opposite their names, being all the persons known to have or claim an interest in the property passing by the will of Timothy B. Blackstone, deceased, which is subject to the payment of the tax imposed by the said acts.

THOMAS P. KELLY.

Sworn to before me December 3d, 1900.

ROBERT MAZET,
Notary Public, N. Y. Co.

6 *Notice of Appearance, Read on Behalf of Appellant.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

SIRS: Please take notice that Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, appears in the above-entitled proceeding, and that I am retained and appear as attorney for her therein, and on her behalf object to the appraisal and taxation under the laws of the State of New York relating to taxable transfers of any property, as passing by transfer under said will to any of the legatees or devisees thereunder, on the following grounds, namely:

I. That Timothy B. Blackstone, the decedent above named, left no property within the State of New York which is subject to taxation in said State, and that accordingly this court has no jurisdiction in this proceeding.

II. That all the property passing by said will to said legatees and devisees has been subjected to an inheritance tax under the laws of the State of Illinois, and that such tax has been duly paid.

7 III. That the said Timothy B. Blackstone was not a resident of or domiciled in the State of New York at the time of his death, and that no one of said legatees or devisees was at that time or now is domiciled in said State.

IV. That the taxation of any property of the said Timothy B. Blackstone in this proceeding would be unconstitutional and void, for the following reasons:

(1.) That it would impair the obligation of contracts in violation of section 10 of article 1 of the Constitution of the United States.

(2.) That it would deny full faith and credit to the public acts, records and judicial proceedings of the State of Illinois, in violation of section 1 of article IV of said Constitution.

(3.) That it would deny to citizens of the State of Illinois some of the privileges and immunities of citizens in the State of New York, in violation of section 2 of article IV of said Constitution.

(4.) That it would deprive said legatees and devisees of property without due process of law, in violation of article V of the amendment to said Constitution.

(5.) That it would abridge the privileges or immunities of citizens of the United States; that it would deprive said legatees and devisees of property without due process of law, and that it would deny said legatees and devisees the equal protection of the law, all in violation of article XIV of amendment to said Constitution.

(6.) That it would deprive said legatees and devisees of property without due process of law, in violation of section 6 of article
8 1 of the constitution of the State of New York.

Dated New York, December 17, 1900.

Yours, &c., EDWARD W. SHELDON,

Attorney for Isabelia F. Blackstone, Individually and as Executrix, &c., of Timothy B. Blackstone, Deceased, No. 45 Wall Street, Manhattan, New York.

To Charles B. Page, Esq., appraiser. Julius Offenbach, Esq., attorney for the comptroller of the city of New York.

Appraiser's Oath, Read on Behalf of Respondent.

Surrogate's Court, County of New York.

In the Matter of the Estate of TIMOTHY B. BLACKSTONE, Deceased, to be Appraised for Taxation Pursuant to the Law Relative to Taxable Transfers of Property.

CITY AND COUNTY OF NEW YORK, *ss:*

I, Charles B. Page, who was appointed the appraiser in the above matter, by an order made and entered on the 12th day of November, 1900, do solemnly swear, that I will faithfully and fairly
9 perform the duties of such appraiser, and make a just and true report according to the best of my understanding

CHARLES B. PAGE.

Sworn to before me this 3d day of December, 1900.

WM. C. WILSON,
Notary Public, N. Y. Co.

Appraiser's Report, Read on Behalf of Respondent.

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

To the surrogate's court of the county of New York:

I, Charles B. Page, who was, by an order of Hon. Frank T. Fitzgerald, one of the surrogates of the county of New York, made and

entered on the 12th day November, 1900 (certified copy of which order is hereto annexed), directed to act as appraiser, in pursuance of chapter 908, of the Laws of 1896, and the acts amendatory thereof and supplemental thereto, do respectfully report:

10 First. That immediately after my appointment, I took the oath prescribed by statute, which is hereto annexed; and I gave notice by mail, postage prepaid, to all persons known to have or claim an interest in all property subject to the tax imposed by said law, to wit: to the following-named persons, being those named in the petition for said order, of the time and place I would appraise the property of Timothy B. Blackstone, deceased, subject to the payment of said tax; a true copy of said notice is also hereto attached:

Hon. Bird S. Coler, comptroller.

Julius Offenbach, Esq., attorney for comptroller.

Isabella F. Blackstone.

Second. I further report that at the time and place in said notice stated, to wit: on the 12th day of December, 1900, at 11.00 o'clock in the forenoon, at room 1403, in the Home Life building, No. 256 Broadway, in the borough of Manhattan, in the city of New York, and at other and subsequent times and at divers places, I appraised the estate of said Timothy B. Blackstone, deceased, at its fair market value on the 26th day of May, 1900, the date of the death of said decedent, as follows:

Property of decedent in this State subject to tax in this proceeding, consisting wholly of cash on deposit with the United States Trust Company, amounting to	$4,843,456.72
And with Cuyler, Morgan & Co., amounting to	10,692.24
Total	$4,854,148.96
The proportionate amount of deductions in this State amount to	300,539.38
Leaving a net personal estate of	$4,553,609.58

11 Third. I further report that Timothy B. Blackstone died on the 26th day of May, 1900, a resident of the city of Chicago, in the State of Illinois, leaving a last will and testament, copy of which is hereto annexed; that said will was duly admitted to probate and letters testamentary thereupon issued to Isabella F. Blackstone, on the 20th day of June, 1900, by the probate court of Cook county, Illinois, and that under the terms of said will the testator made the following disposition of his estate:

Specific Legacies.

Ellen B. Plant, niece, cash legacy	25,000.00
William L. Harrison, grand-nephew, cash legacy	30,000.00
Paul Harrison, grand-nephew, cash legacy	30,000.00
Gertrude Harrison, grandniece, cash legacy	20,000.00

George Blackstone, nephew, cash legacy	50,000.00
Adelaide Blackstone, niece, cash legacy	20,000.00
Emma Pond, niece, cash legacy	20,000.00
William N. Blackstone, nephew, cash legacy	250,000.00
Harriet B. Camp, niece, cash legacy	25,000.00
Frances Ella Huntington, no relation, cash legacy	25,000.00
Lorenzo Blackstone, grand-nephew, cash legacy	25,000.00
Morton F. Plant, nephew, cash legacy	10,000.00
William J. Brysen, no relation, cash legacy	15,000.00
Susan E. Jones, no relation, cash legacy	5,000.00
12 James Blackstone Memorial Library Association of Branford, Conn., cash legacy	100,000.00
Art Institute of Chicago, cash legacy	25,000.00
Chicago orphan asylum, cash legacy	25,000.00
Home for the Friendless, Chicago, Ill., cash legacy	25,000.00
St. Luke's hospital, Chicago, Ill., cash legacy	25,000.00
Passavant Memorial hospital, Chicago, Ill., cash legacy	25,000.00
Chicago Relief & Aid Society, cash legacy	$25,000.00
Total specific legacies	$800,000.00

Leaving a net residuary estate of $3,753,609.58 which, under the terms of the will, is disposed of as follows:

Isabella F. Blackstone, widow, residuary estate	$3,753,609.58

Fourth. I further report that the said decedent left no real estate within the State of New York.

Fifth. I further report that all the persons interested in this proceeding, as above set forth, are of full age and of sound mind.

Sixth. I further report that the following appearances were made before me in this proceeding:

Julius Offenbach, Esq., attorney for city comptroller.

Edward W. Sheldon, Esq., attorney for Isabella F. Blackstone.

Seventh. I further report that I appraised the estate of said Timothy B. Blackstone, deceased, subject to tax in this proceeding, at its fair market value at the date of the death of the said decedent, to wit,—on the 26th day of May, 1900, as follows:

13 Ellen B. Plant, niece, interest in estate	$25,000.00
William L. Harrison, grand-nephew, interest in estate	30,000.00
Paul Harrison, grand-nephew, interest in estate	30,000.00
Gertrude Harrison, grandniece, interest in estate	20,000.00
George Blackstone, nephew, interest in estate	50,000.00
Adelaide Blackstone, niece, interest in estate	20,000.00
Emma Pond, niece, interest in estate	20,000.00
William N. Blackstone, nephew, interest in estate	250,000.00
Harriet B. Camp, niece, interest in estate	25,000.00
Frances Ella Huntington, no relation, interest in estate	25,000.00
Lorenzo Blackstone, grand-nephew, interest in estate	25,000.00
Morton F. Plant, nephew, interest in estate	10,000.00

	William J. Bryson, no relation, interest in estate.....	15,000.00
	Susan E. Jones, no relation, interest in estate.....	5,000.00
	James Blackstone Memorial Library Association of Branford, Conn., interest in estate.....	100,000.00
	Art Institute of Chicago, interest in estate.....	25,000.00
	Chicago orphan asylum, interest in estate.....	25,000.00
	Home for the Friendless, Chicago, Ill., interest in estate	25,000.00
	St. Luke's hospital, Chicago, Ill., interest in estate.....	25,000.00
	Passavant Memorial hospital, Chicago, Ill., interest in estate	25,000.00
14	Chicago Relief & Aid Society, interest in estate..	25,000.00
	Isabella F. Blackstone, widow, interest in estate..	3,753,609.58

Dated New York, January 31, 1901.

Respectfully submitted:

CHARLES B. PAGE, *Appraiser.*

Executrix'- Answer, Read on Behalf of Appellant.

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, appearing in this matter for the purpose of contesting the jurisdiction of the court, for answer to this proceeding and to the petition herein of Bird S. Color, comptroller of the city of New York, respectfully shows:

First. This respondent admits, as alleged in said petition, that said Timothy B. Blackstone died on the 23th day of May, 1900, while residing without the State of New York, leaving a last will and testament, upon which letters testamentary were there-
15 after duly issued by the probate court of Cook county, Illinois, to this respondent; that no transfer tax has been paid in the State of New York upon any of the property of said decedent, and that no application for letters ancillary or otherwise has been made by the representatives of said decedent in the county of New York, but this respondent denies every other allegation contained in said petition.

Second. That the said Timothy B. Blackstone was, at the time of his death, which took place in the city of Chicago in said county of Cook, State of Illinois, and had been for many years prior thereto, a resident of and domiciled in said city; that this respondent was his wife and since his death has resided in and maintained the family home in said city; that the testator never lived nor did business in the State of New York; that at the time of his death he was seventy years old and had retired from business pursuits, but that for more than thirty-four years prior to March, 1899, he was the

president of the Chicago & Alton Railroad Company, a corporation formed under the laws of the State of Illinois, and having its principal office in the city of Chicago aforesaid, and was a large holder of the preferred and common stock of said corporation; that in or about the month of March, 1899, an agreement was made by the holders of more than a majority of each class of said stock to sell their stock to certain persons acting on behalf of themselves and others for the purpose of such purchase; that by the terms of such agreement the vendors were to deposit their certificates of stock with the United States Trust Company of New York, receiving in payment therefor $200.00 for each share of preferred stock, and $175.00 for each share of common stock; that on or about the 29th day of March, 1899, the decedent, having determined to sell his
16 stock upon the terms aforesaid, forwarded to said trust company by express, from the city of Chicago, where they had always been held, certificates for 11,450 shares of the preferred stock of said railroad company and 15,077 shares of the common stock of said railroad company owned by him, and also a certificnte for 49 shares of preferred stock and 1673 shares of the common stock held by him as trustee of the estate of one Henry B. Norton, deceased; that instead of having the proceeds of such sale immediately remitted to him by said trust company, the decedent, in accordance with a special agreement previously made by him with said trust company directed that company upon the receipt of said stock to hold temporarily the proceeds thereof to his credit individually and as trustee as aforesaid respectively, until his further order; that by the terms of such special agreement said trust company was to hold said sums subject as aforesaid, to his order, was to pay him interest thereon at the rate of 2½ per cent. per annum, and was to repay the principal on demand provided that notice of not less than two days should be given to said trust company before any portion of such principal in excess of $100,000 was demanded; that the decedent accepted such terms and received the acknowledgment of said trust company, that it so held to his credit individually on the 31st day of March, 1899, the sum of $4,881,522.21, and to his credit as trustee of the estate of H. B. Norton, deceased, of the sum of $299,527.06; that these sums were the only deposits ever made by the decedent in said trust company; that said proceeds of sale of his individual stock constituted at least seven-eighths of his fortune; that his object in allowing such proceeds to remain transitorially in the city of New York was to avoid the risk and expense of their transfer to Chicago and their probable retransfer to New York when he had determined what permanent investment of them he should
17 make; that in the case of the estate of said Henry B. Norton, deceased, he accomplished such permanent investment and withdrew all of said moneys prior to his death, but that in the case of his personal funds, owing to ill health, he was unable to find satisfactory investments for more than $192,000 of such deposit; and that continuously and progressively from March, 1899, to the time

of his death, the decedent was in feeble health and unable to attend actively to his business affairs.

Third. That at the time of the decedent's death, the balance of such deposit, including the interest credited by said trust company to March 31, 1900, was $4,820,958.93, and that on August 9, 1900, said trust company credited interest on such balance from March 31, 1900, to May 26, 1900, amounting at the rate of three per cent. per annum to $22,497.79, so that the total amount due to the decedent's estate from said trust company as of May 26th, 1900, was $4,843,456.72.

Fourth. That at the time of the decedent's death the firm of Cuyler, Morgan & Co., bankers, of the city of New York, and transfer agents of said Chicago & Alton Railroad Company, was indebted to him in the sum of $10,692.24, being the balance of his deposit account with said firm.

Fifth. That the decedent left a last will and testament, dated September 2, 1898, a true copy of which is hereto annexed marked Exhibit A and made part of this answer, and which was duly proved on the 17th day of July, 1900, before the probate court of said county of Cook, Illinois, to which jurisdiction in that behalf belonged, and letters testamentary upon said will were on said last-mentioned date duly issued to this respondent, the sole executor therein named.

Sixth. That no proceedings for the probate of said will or
18 the administration of said estate have been taken in the State of New York; that this respondent and all the next of kin and legatees of the testator reside either in the city of Chicago aforesaid, or elsewhere without the State of New York; that Mary A. Plant, the sister of the decedent named in the first paragraph of his will, died before him, and that all of the remaining general legacies given by said will have been paid in full by this respondent.

Seventh. That prior to the institution of this proceeding, proceedings were duly taken in the county court of Cook county, Illinois, under the law of the State of Illinois, approved June 15, 1895, entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same," for the imposition of a tax upon the real and personal estate of said decedent; that an appraiser was duly appointed by the county judge of Cook county pursuant to the terms of said act, who thereupon duly appraised the property passing under the will of the decedent as being of the fair market value less $199,708.81, of deductions, of $5,141,690.01; that the property so appraised was composed as follows: Illinois real estate, $236,793; the above-mentioned balances with the United States Trust Company of New York and the Messrs. Cuyler, Morgan & Co., $4,854,148.96, and miscellaneous personal property, $250,454.86; that an order was thereupon duly made by said county judge adopting such appraisal and fixing the tax on the right to the succession to the legacies and devise contained in said will at $68,026.86; that on the 26th day of November, 1900, and before this respondent had any knowledge of the present proceeding, this respondent duly paid the amount of said tax less the discount of five per cent. allowed by

said law. With the exception of one legacy aggregating $50,000, such tax was paid by this respondent personally and the lega-
19 cies themselves were paid to the respective legatees without deduction for the tax. Hereto annexed, marked Exhibits B, C, D and E respectively, are true copies of the official inventory of the decedent's estate, of said Illinois inheritance tax law, of the official appraisal and order in said Illinois inheritance tax proceeding, and a duplicate acknowledgment in detail by the treasurer of Cook county of the full payment to him of said tax.

Eighth. That as this respondent is informed and believes, the method adopted by the State of Illinois as above set forth of taxing debts due to its citizens by citizens of other States, is the same method as that which prevails in the State of New York.

Ninth. That as this respondent is further informed and believes, this court has no jurisdiction of the subject-matter of this proceeding or of the person of this respondent, for the reason that this respondent is a citizen and resident of the State of Illinois and that there was no property within the State of New York belonging to the said decedent at the time of his death, which is subject to a transfer tax in said State.

Tenth. That as this respondent is further informed and believes, the transfer tax law of the State of New York was not intended to, and does not, in fact, include in its operation the above-mentioned money owing to the decedent at the time of his death by said United States Trust Company of New York or said Cuyler, Morgan & Co., but that if was so intended by said law, that said law was to that extent unconstitutional and void, for the following reasons:

1. That it was in violation of section 10 of article I of the Constitution of the United States which prohibits any State from passing any law impairing the obligation of contracts.

20 2. That it was in violation of section 1 of article IV of said Constitution which requires that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.

3. That it was in violation of section 2 of article IV of said Constitution, which provides that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

4. That it was a violation of article V of amendment to said Constitution which provides that no person shall be deprived of property without due process of law.

5. That it was in violation of article XIV of amendment to said Constitution, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

6. That it was in violation of section 6 of article I of the constitution of the State of New York which provides that no person shall be deprived of property without due process of law.

Wherefore this respondent prays that this proceeding may be dismissed.

ISABELLA F. BLACKSTONE,
Individually and as Executrix, &c., of
Timothy B. Blackstone, Deceased, Respondent.
EDWARD W. SHELDON,
Attorney for Respondent.

21 STATE OF ILLINOIS, } ss:
County of Cook, }

Isabella F. Blackstone, being duly sworn, says that individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, she is the respondent above named, and that the foregoing answer is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

ISABELLA F. BLACKSTONE.

Subscribed and sworn to before me this 17th day of December, 1900.

FRANK G. OFFENLOCK,
[SEAL.] *Notary Public.*

(County clerk's certificate attached.)

STATE OF ILLINOIS, } ss:
Cook County, }

I, Philip Knopf, county clerk and clerk of the county court of Cook county, the same being a court of record, do hereby certify that Frank G. Offenlock, whose name is subscribed to the annexed jurat, was at the time of signing the same a notary public in Cook county, duly commissioned, sworn and acting as such, and authorized to administer oath-; that I am well acquainted with the handwriting of said notary and verily believe that the signature of the said jur*or* is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the city of Chicago, in the said county, this 17th day of Dec., 1900.

[SEAL.] PHILIP KNOPF, *Clerk.*

10c. rev. stamp cancelled.

22 EXHIBIT A.

I, T. B. Blackstone, of the city of Chicago, county of Cook and State of Illinois, being of sound mind and memory, do make, publish and declare this to be my last will and testament hereby revoking all others by me heretofore made.

I.

I direct that all my just debts be paid as soon as conveniently may be after my decease.

II.

I give and bequeath to my sister Mary A. Plant the sum of fifty thousand dollars.

III.

I give and bequeath to my niece Ellen B. Plant the sum of twenty-five thousand dollars.

IV.

I give and bequeath to my grand-nephew William L. Harrison the sum of thirty thousand dollars.

V.

I give and bequeath to my grand-nephew Paul Harrison the sum of thirty thousand dollars.

VI.

I give and bequeath to my grandniece Gertrude Harrison the sum of twenty thousand dollars.

VII.

I give and bequeath to my nephew George Blackstone the sum of fifty thousand dollars.

VIII.

I give and bequeath to my niece Adelaide Blackstone the sum of twenty thousand dollars.

IX.

I give and bequeath to my niece Mrs. Emma Pond the sum of twenty thousand dollars.

23 X.

I give an bequeath to my nephew William N. Blackstone the sum of two hundred and fifty thousand dollars.

XI.

I give and bequeath to my niece Harriet B. Camp the sum of twenty-five thousand dollars.

XII.

I give and bequeath to Frances Ella Huntington the sum of twenty-five thousand dollars.

XIII.

I give and bequeath to my grand-nephew Lorenzo Blackstone the sum of twenty-five thousand dollars.

XIV.

I give and bequeath to my nephew Morton F. Plant the sum of ten thousand dollars.

XV.

I give and bequeath to my friend William J. Brysen the sum of fifteen thousand dollars.

XVI.

I give and bequeath to Susan E. Jones the sum of five thousand dollars.

XVII.

I give and bequeath to the James Blackstone Memorial Library Association of Branford, Connecticut the sum of one hundred thousand dollars.

XVIII.

I give and bequeath to the "Art Institute of Chicago" the sum of twenty-five thousand dollars.

XIX.

I give and bequeath to the "Chicago orphan asylum" the sum of twenty-five thousand dollars.

24 XX.

I give and bequeath to the "Home for the Friendless" of and located in the city of Chicago Illinois the sum of twenty-five thousand dollars.

XXI.

I give and bequeath to "St. Luke's hospital" of Chicago, Illinois, the sum of twenty-five thousand dollars.

XXII.

I give and bequeath to the "Passavant Memorial hospital" of Chicago, Illinois, the sum of twenty-five thousand dollars.

XXIII.

I give and bequeath to the "Chicago Relief and Aid Society" of Chicago, Illinois, the sum of twenty-five thousand dollars.

XXIV.

I direct that the foregoing bequests shall be paid to the respective persons and the proper officer or officers of the respective corporations as soon after my decease as shall be convenient to my executrix; and to the end that the same may be seasonably and conveniently paid to the proper persons and corporations according to the intent expressed herein I hereby authorize and empower my executrix, in her discretion to make use of any of my bonds, stock or other securities and to use the same as so much money at their market value without converting such securities into money. This discretion is vested in my executrix exclusively and she may con-

vert such securities into cash to pay each or all of the foregoing bequests or use the securities at their market value as she may deem most expedient.

XXV.

All the rest, remainder and residue of my estate, real, per-
25 sonal and mixed of every kind and nature and wherever situated I give, devise and bequeath to my wife Isabella F. Blackstone and to her heirs, executors, administrators and assigns as & for her absolute estate and property forever.

XXVI.

I do nominate and appoint my wife, Isabella F. Blackstone, to be the sole executrix of this my last will and testament and I do direct that she shall not be required to give any security on her bond as such executrix.

In witness whereof I have hereunto set my hand and seal this second day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

T. B. BLACKSTONE. [SEAL.]

The foregoing instrument of writing, composed of four half sheets and written upon only one side, was on this second day of September, 1898, signed, sealed, published and declared by the said T. B. Blackstone as and for his last will and testament in our presence, and we at his request and in his presence and in the presence of each other have hereunto signed our names as subscribing witnesses thereto.

WM. BROWN,
Of Jacksonville, Ills.
WM. BROWN, JR.

Will proved and admitted to record in open court this 17th day of July, A. D. 1900.

JOHN H. BATTEN,
Acting Probate Judge.

26 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Probate Court of Cook County.

Proved and admitted to record in open court this 17th day of July, A. D. 1900.

JAMES REDDICK, *Clerk.*

Filed June 21st, 1900.

JAMES REDDICK, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to all to whom these presents shall come, Greeting:

Know ye, that whereas, Timothy B. Blackstone, late of the county of Cook and State of Illinois, died on or about the 26th day of May, A. D. 1900, as it is said, after having duly made and published his last will and testament, a copy whereof is hereunto annexed, leaving at the time of his death property in this State which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; and inasmuch as it appears that Isabella F. Blackstone has been appointed executrix in and by the said last will and testament, to execute the same, and to the end that the said property may be preserved for those who shall appear to have a legal right or interest therein, and that said will may be executed according to the request of the said testator we do hereby authorize her, the said Isabella F. Blackstone, as such executrix to collect and secure all and singular the goods and chattels, rights and credits which were of the said Timothy B. Blackstone at the time of his decease, in whose-
27 soever hands or possession the same may be found, in this State, and well and truly to perform and fulfill all such duties as may be enjoined upon her by the said will, so far as there shall be property and the law charge her and in general to do and perform all other acts which now or hereafter may be required of her by law.

Witness, James Reddick, clerk of the probate court of said county of Cook, and the seal of said court, this 17th day of July, A. D. 1900.

[SEAL.] JAMES REDDICK, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county, in the State aforesaid, do hereby certify that the within is a true and correct copy of the last will and testament of Timothy B. Blackstone, deceased, and of letters testamentary issued thereon, on the 17th day of July, A. D. 1900, to Isabella F. Blackstone, now in force, as appears from the originals on file, and from the records of the probate court, in my office.

In witness whereof I have hereunto set my hand and affixed the seal of the said probate court, at Chicago, in said county, this 17th day of July, A. D. 1900.

[SEAL.] JAMES REDDICK, *Clerk.*

UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county, and keeper of the records and files thereof, in the State aforesaid, do

hereby certify the annexed and foregoing to be a true and correct copy of the last will and testament of Timothy B. Blackstone, deceased, and letters testamentary issued to Isabella F. Blackstone, on the 17th day of July, A. D. 1900, in the matter of the estate of Timothy B. Blackstone, deceased, as appears from the originals on file and from the records of the probate court in my office.

28

In witness whereof I have hereunto set my hand and affixed the seal of said probate court, at my office in the city of Chicago, in said county, this 12th day of December, A. D. 1900.

JAMES REDDICK,
Clerk of the Probate Court.

[SEAL.]

(10c. inter. rev. stamp cancelled.)

STATE OF ILLINOIS, } ss:
County of Cook, }

I, C. S. Cutting, probate judge of Cook county, and sole presiding judge of the probate court of Cook county, in the State of Illinois, do hereby certify that James Reddick, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same, the clerk of the probate court of Cook county aforesaid, and keeper of the records, files and seal thereof, duly elected and qualified to office, and that full faith and credit are, and of right ought to be, given to all his official acts as such, in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at Chicago, in said Cook county, this 12th day of December, A. D. 1900.

CHARLES S. CUTTING,
Probate Judge of Cook County, Illinois.

[SEAL.]

(10c. inter. rev. stamp cancelled.)

29 UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the Honorable C. S. Cutting, whose name is subscribed to the annexed and foregoing certificate, at the time of the signing thereof, and now is, the probate judge of said Cook county, and sole presiding judge of said probate court, duly elected, commissioned and qualified, and that his said signature is genuine.

In witness whereof I have signed my name and affixed the seal of said probate court, at my office, in the city of Chicago, in said Cook county, this 12th day of December, 1900.

JAMES REDDICK, *Clerk.*

[SEAL.]

(10c. inter. rev. stamp cancelled.)

EXHIBIT "B."

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Probate Court Thereof, September Term, A. D. 1900.

In the Matter of the Estate of TIMOTHY B. BLACKSTONE, Deceased.

And now on this day comes Isabella F. Blackstone, executrix of the last will and testament of Timothy B. Blackstone, de-
30 ceased, and exhibits and files this her inventory of the property both real and personal, belonging to the estate of Timothy B. Blackstone, at the time of his death.

Real Property.

Lot 9, block 13, frac. sec. 15, add. to Chicago, improved. House and stable	$150,000.
N. E. ¼ sec. 32 T. 36 R. 1 La Salle Co. Ill. 157 acres	29,693.
W. ½ and S. E. ¼ T. 36 R. 1 La Salle Co. Ill. 114 acres	House & barn.
66 44	
Sub. div. of N. 32 a E. 45 a S. E. ¼	
Lot 6, bl'k 2, Mendota, Ill	200.00
" 12, " 2, " "	200.00
" 2 & 3, " 28, " "	200.00
" 8 & 9, " " " "	200.00
W. 60 ft. lot. 11 bk. 29, Mendota, Ill	100.00
" 12 " "	200.00
E. ½ S. E. ¼ sec. 10 T. 41 R. 16, Miller Co. Mo. unimproved	350.00
E. ½ sec 19 S. E. ¼ sec. 20 Will Co. Ill., unimproved	22,000.00
	$203,143.00

(Unimproved.)

Personal Property.

Deposit in bank, Chicago		$2,355.86
" " " New York city		4,854,148.96
Note am't on deposit U. S. Trust Co.	4,843,456.72	
Note amount on deposit Cuyley, Morgan & Co.	10,692.24	
500 shares Ill. Central R. R. Co. stock		50,000.00
2 " Kansas City, St. L. & Chicago R. R. stock		200.00
528 shares Joliet and Chicago R. R. stock		52,800.00
31 121 " Louisiana and Missouri River R. R. stock		12,100.00
653 shares Ill. & Miss. Telegraph Co. stock		65,300.00
160 " Union Rendering Co. stock		16,000.00
250 " Chicago Auditorium Association stock		25,000.00

8 bonds Louisville & Nashville R. R.		8,000.00
4 " Miss. River Bridge Co.		4,000.00
16 " ($100 each) Chicago Club		1,600.00
100 shares Atlas Nat. Bank. No value.		
3 bonds Chicago Athenæum Ass'n. No value.		
Willis M. Hitt	$3,331.41. Doubtful.	
George M. Bogue	1,000 "	
J. H. Wood,	5,000 "	
		$5,091,504.82
As per appraisement		599.

Recapitulation.

Real estate	$203,143.
Personal property	5,091,504.82
Appraisement	599.00
Total	$5,295,246.82

A Bill of Appraisement of the Estate of Timothy B. Blackstone, Late of the County of Cook and State of Illinois, Deceased.

3	carriages, at $75.00 each	$225 00
3	horses, at $75.00 each	225 00
2	double set- harness, at $30.00 each	60 00
1	single set harness	20 00
32	3 desks, at $10.00 each	30 00
1	table	5 00
3	book-cases, at $5.00 each	15 00
1	lounge	5 00
14	chairs, at $1.00 each	14 00
		$599 00

We, the undersigned, appraisers of the estate of Timothy B. Blackstone, deceased, do hereby certify that the foregoing is a full, just and impartial appraisement of the personal estate of said deceased, subject to appraisement, so far as the same has come to our sight or knowledge.

Witness our hands and seals this 25th day of September, 1900.

HARRY G. HALL, [SEAL.]
FRANK C. FARNUM, [SEAL.]
HENRY C. ANDERSON, [SEAL.]
Appraisers.

Approved in open court, Sept. 26, 1900.

JOHN H. BATTEN,
Acting Probate Judge of Cook County, Ills.

Filed Sept. 26, 1900.

JAMES REDDICK, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

The Peop'e of the State of Illinois to Frank C. Farnum, Henry C. Anderson, Harry G. Hall, of the county of Cook and State of Illinois, Greeting:

This is to authorize you, jointly, to appraise the goods, chattels and personal estate of Timothy B. Blackstone, late of the county of Cook, and State of Illinois, deceased, so far as the same shall come to your sight and knowledge, each of you having first taken
33 the oath hereto annexed; a certificate whereof you are to return, annexed to an appraisement bill of said goods, chattels and personal estate by you appraised, in dollars and cents; and in the said bill of appraisement you are to set down in a column or columns opposite to each article appraised, the value thereof.

Witness, James Reddick, clerk of probate court of Cook county, and the seal of said court, this 17th day of July, A. D. 1900.

[SEAL.] JAMES REDDICK, *Clerk*

We, and each of us, do solemnly swear that we will well and truly, without partiality or prejudice, value and appraise the goods, chattels and personal estate of Timothy B. Blackstone, deceased, so far as the same shall come to our sight and knowledge; and that we will, in all respects, perform our duty as appraisers, to the best of our skill and judgment.

FRANK C. FARNUM, [SEAL.]
HARRY G. HALL, [SEAL.]
HENRY C. ANDERSON, [SEAL.]
Appraisers.

Subscribed and sworn to before me, James Reddick, clerk of the probate court of Cook county, this 25th day of Sept., A. D. 1900.

JAMES REDDICK, *Clerk.*

I, Isabella F. Blackstone, executrix of the last will and testament of Timothy B. Blackstone, deceased, do hereby certify that the foregoing is a full, true, complete and perfect inventory of all of the estate, both real and personal, belonging to the estate of said deceased, that has come to my hands, possession, sight or knowledge as such executrix.

ISABELLA F. BLACKSTONE,
Executrix as Aforesaid.

September 25th, A. D. 1900.

Approved in open court Sept. 26, 1900.
JOHN H. BATTEN,
Acting Probate Judge of Cook County, Illinois.

Filed Sept. 26, 1900.
JAMES REDDICK, *Clerk.*

34 UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the Honorable Charles S. Cutting, whose name is subscribed to the annexed and foregoing certificate, was, at the time of the signing thereof, and now is, the probate judge of said Cook county, and sole presiding judge of said probate court, duly elected, commissioned and qualified, and that his said signature is genuine.

In witness whereof I have signed my name and affixed the seal of said probate court, at my office, in the city of Chicago, in said Cook county, this 10th day of December, 1900.

[SEAL.] JAMES REDDICK, *Clerk.*

(10c. inter. rev. stamp cancelled.)

UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the annexed and foregoing to be a true and correct copy of the inventory and appraisement of the estate of Timothy B. Blackstone, deceased, filed and approved on the 26th day of September, A. D. 1900, as it appears from the originals on file and from the records of the probate court in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said probate court, at my office, in the city of Chicago, in said county, this 10th day of December, A. D. 1900.

JAMES REDDICK,

[SEAL.] *Clerk of the Probate Court.*

(10c. inter. rev. stamp cancelled.)

35 STATE OF ILLINOIS, } ss:
County of Cook, }

I, Charles S. Cutting, probate judge of Cook county, and sole presiding judge of the probate court of Cook county, in the State of Illinois, do hereby certify that James Reddick, Esq., whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, the clerk of the probate court of Cook county aforesaid, and keeper of the records, files and seal thereof, duly elected and qualified to office, and that full faith and credit are, and of right ought to be given, to all his official acts as such, in all courts of records and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal at Chicago, in said Cook county, this 10th day of December, A. D. 1900.

CHARLES S. CUTTING, [SEAL.]
Probate Judge of Cook County, Illinois.

(10c. inter. rev. stamp cancelled.)

EXHIBIT C.

Tax on Devises, Inheritances, and Gifts.

An act to tax gifts, legacies, and inheritances in certain cases, and to provide for the collection of the same.

Approved June 15th, 1895; in force July 1st, 1895.

L. 1895, chap. 301, SECTION 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* All property, real, personal and mixed, which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State, or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein
36 or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise or by reason whereof any person or body politic or corporation shall become beneficially entitled in possession or expectation to any property or income thereof, shall be, and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid, as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to the death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property, received by each person, and at and after the same rate, for every less amount, provided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunts, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be

two dollars on every one hundred dollars of the clear market
37 value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all the property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars; provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

§2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant during her life or for a term of years or remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for term of years shall not be subject to any tax, and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate or term of years, the tax transcribed by this act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on the said property until the same is paid: Provided, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or en-
38 joyment of such property, or, in that case, said person or persons or body politic or corporate shall give a bond to the people of the State of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the county judge may approve, conditioned for the payment of the said tax and interest thereon, at such time or period as they or their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county; provided, further, that such person shall make a full verified return of said property to said county judge and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years.

§3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent. per annum shall be charged and collected thereon for such time as said taxes *is* not paid: Provided, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent. shall be allowed and deducted from said tax,

and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in § 2 of this act for the payment of said tax, together with interest.

§ 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money, he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before paying the same shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of said legacy might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his account to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

§ 5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax in the same manner as they may be enabled to do by law for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

§ 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers, shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the State treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlements of his accounts, but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer, and a copy thereof certified by him.

§ 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to

give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their respective duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

§8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritant tax has been deducted, in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the State or county treasury, or by the county treasurer if it has been so paid.

§9. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of decedent, or in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise, the corporation forming such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable to such taxes.

41 §10. When any amount of said tax shall have been paid erroneously to the State treasury, it shall be lawful for him, on satisfactory proof rendered to him by said county treasurer of said erroneous payments, to refund and pay to the executor, administrator or trustee, person or persons, who have paid any such tax in error, the amount of such tax so paid; provided that all applications for the repayment of said tax shall be made within two years from the date of said payments.

§11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, or whenever, occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the county judge may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the county judge to use subpœnas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, that he shall make a report thereof and of such value in writing to said county judge with the depositions of the witnesses examined and such other facts in relation thereto, and to said matter as said county judge may by order require to be filed in the office of the clerk of said county court, and from this report the said county judge shall forthwith use and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall imme-

diately give notice by mail to all parties known to be inter-
42 ested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisement or assessment, on paying the given security proof to the county judge to pay all costs, together with whatever taxes that shall be fixed by said court. The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of said tax, on the certificate of the county judge, at the rate of $3 per day for every day actually and necessarily imployed in said appraisement, together with his actual and necessary travelling expenses.

§ 12. Any appraiser appointed by this act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than $250, nor more than $500, and imprisonment not exceeding ninety days, and in addition thereto the county judge shall dismiss him from such service.

§ 13. The county court in the county in which the real property is situated, of the decedent who is not a resident of the State, or in the county in which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

§ 14. If it shall appear to the county court that any tax accruing under this act has not been paid according to law, it shall issue a summons summoning the persons interested in the property
43 liable to the tax to appear before the court on a day certain, not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or which may hereafter be provided in probate cases in the county courts in this State, and the fees and costs in such cases shall be the same as in probate cases in the county courts of this State.

§ 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this act, after the refusal or neglect of the person interested in the property liable to pay said tax, to pay the same, he shall notify the State attorney of the proper county, in writing, of such refusal to pay said tax, and the State's attorney so notified, if he has proper cause to believe a tax is due and unpaid shall prosecute the proceeding in the county court in the proper county, as provided in sec. 14 of this act, for the enforcement and collection of such tax, and in such case said court shall allow as costs in the said case such fees to said attorney as he may deem reasonable.

§ 16. The county judge and county clerk of each county shall,

every three months, make a statement in writing to the county treasurer of the county of the property from which, or the party from whom he has reason to believe a tax under this act is due and unpaid.

§ 17. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons, and taking the proceedings specified in § 14 of this act, the State treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that has not otherwise been paid.

44 § 18. The treasurer of the State shall furnish to each county judge a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereon filed with him, which books shall be kept in the office of the county judge as a public record.

§ 19. The treasurer of each county shall collect and pay the State treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the auditor of public accounts on the first Monday of March and September of each year, stating for what estate paid, and in such form and containing such particulars as the auditor may prescribe, and for all said taxes collected by him and not paid to the State treasurer by the first day of October and April of each year, he shall pay the interest at the rate of ten per cent. per annum.

§ 20. The treasurer of each county shall be allowed to retain 2% on all taxes paid and accounted for by him under this act, in full for his services in collecting and paying the same, in addition to his salary or fees now allowed by law.

§ 21. Any person or body politic or corporate shall upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax, and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in the book to be kept by said clerk for such purpose.

45 § 22. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: Provided, that said lien shall be limited to the property chargeable therewith; and provided, further, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchasers of real estate.

§ 23. All laws or parts of laws inconsistent herewith, be, and the same are hereby, repealed.

EXHIBIT D.

UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
County of Cook, }

Pleas before the Honorable Orrin N. Carter, sole presiding judge of the county court of Cook county, in the State of Illinois, at a regular term of said county court of Cook county, begun and holden at the court-house, in the city of Chicago, in said county and State, on the second Monday, being the 12th day, of November, in the year of our Lord one thousand nine hundred, and of the Independence of the United States of America the one hundred and twenty-fifth.

Present: The Honorable Orrin N. Carter, judge of the county court of Cook county. Ernest J. Magerstadt, sheriff of Cook county.
Attest: PHILIP KNOPF, *Clerk.*

Be it remembered that heretofore, to wit: on the 26th day of November, in the year of our Lord one thousand nine hundred, the same being one of the days of November term of the county court of Cook county, the following appraiser's report was filed with the clerk of said court in words and figures, to wit:

46 *Appraiser's Report.*

STATE OF ILLINOIS, } ss:
Cook County, }

In the County Court of Cook County.

In the Matter of the Estate of TIMOTHY B. BLACKSTONE, Deceased.
Docket No. 723. Inheritance Tax.

To the Honorable Orrin N. Carter, county judge:

I, the undersigned, who was on the 29th day of September, 1900, appointed appraiser under and pursuant to the statutes of the State of Illinois relating to the taxation of gifts, legacies and inheritances in certain cases, approved June 15, 1895, in force July 1, 1895, to fix the fair market value of the property of the estate of said Timothy B. Blackstone, deceased, subject to taxation under said act, respectfully report as follows:

First. Forthwith after said appointment, appearance and waiver of notice by mail to all persons known to have or claim an interest in the property of said decedent subject to assessment, and to such persons as the county judge by order directed, of the time and place at which I would appraise said property was filed waiver of service of said notice is marked Exhibit "A" hereto attached and made a part hereof.

Second. At the time and place in said appearance and waiver stated, to wit, at room 310 100 Washington street, in the city of

Chicago, Illinois, at the hour of 2 p. m. on the 2d day of October, 1900, and thereafter from time to time, pursuant to adjourn-
47 ments regularly had, I proceeded to appraise all such property of the estate of said deceased subject to taxation under said act, and to take evidence in writing under oath of the several witnesses produced concerning said property and the fair market value thereof at the time of the death of said decedent, which depositions so far as the same were taken are hereto attached and made a part of this report, together with certain documentary evidence produced marked Exhibit "B."

And from said appraisement and evidence I find that said decedent Timothy B. Blackstone died seized of property subject to said inheritance tax and that the fair market value of such property of said estate at the time of said decedent's death, and of the several estates, legacies and interests growing out of said estate and passing by reason of the death of said decedent, and the persons entitled therein as heirs, devisees, etc., to be as follows:

SCHEDULE I.

Estate of Timothy B. Blackstone, Deceased.

Date of decedent's death, May 26th, A. D. 1900.
Residence of decedent, Chicago, Cook county, Illinois.
Property transferred by will.
Record of will, Book 33, page 332.
Date of letters, July 17th, A. D. 1900.
Names, titles and addresses of legal representatives, etc.
Isabella F. Blackstone, executrix, 252 Michigan Ave., Chicago, Ills.
Names of persons appearing at appraisement in behalf of estate.
William Brown, attorney for all parties in interest.

48 SCHEDULE II.

Inventory of Decedent's Estate.

	Fair market value.
Real property:	
Lot nine (9) block thirteen (13) fractional section fifteen (15) addition to Chicago improved.....	184,000 00
Northeast quarter (¼) of section thirty-two (32) township (36) range one (1) being one hundred and fifty-seven acres in La Salle county, Illinois; also the west three-quarters (¾) and the southwest quarter (¼) of section thirty-two (32) township thirty-six (36) range one (1) being one hundred and fourteen acres in La Salle county, Illinois, improved with a house and barn on the above-described property.....	29,693 00
Subdivision of north 32–66 in east 45–44 in the southeast quarter (¼) lot six (6) block two (2) Mendota, Illinois.....	200 00

Subdivision north 32–66 east 45–44 southeast quarter (¼) lot twelve (12) block two (2) Mendota, Illinois...	200 00
Lots two (2) and three (3) block twenty-eight (28) Mendota, Illinois	200 00
West sixty (60) feet lot eleven (11) block twenty-nine (29) Mendota, Illinois	100 00
Lot twelve (12) block twenty-nine (29) Mendota, Illinois	200 00
East half (½) section nineteen (19) Will county, Illinois; also southeast quarter (¼) of section twenty (20) Will county, Illinois.....	22,000 00
Total fair market value.....	236,793 00

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Personal property :

	Fair market value.
Cash on deposit in bank at Chicago, Cook county, Illinois	2,355 86
Cash on deposit with Culver, Morgan & Company, New York city, N. Y.....	10,692 24
Cash on deposit with United States Trust Co., New York city, N. Y.....	4,843,456 72
500 shares of the capital stock of the Illinois Railroad Company of the par value of $100 each	56,500 00
2 shares of the capital stock of Kansas City, St. Louis & Chicago Railroad Company of the par value of $100 each.....	300 00
528 shares of the capital stock of the Joliet & Chicago Railroad Company of the par value of $100 each...	75,200 00
121 shares of the capital stock of the Louisiana & Missouri River Railroad Company of the par value of $100 each.....	12,100 00
653 shares of the capital stock of the Illinois & Mississippi Telegraph Company of the par value — $100 each.....	65,300 00
160 shares of the Union Rendering Company stock of the par value of $100 each.....	16,000 00
250 shares of the capital stock of Chicago Auditorium Association of the par value of $100 each.....	2,500 00
8 bonds of the Louisville & Nashville Railroad Company for the principal sum of $1,000 each.....	8,000 00
4 bonds of the Mississippi River Bridge Company for the principal sum of $1,000 each.....	4,000 00
16 bonds of the Chicago Club for the principal sum of $100 each.....	1,600 00
50 Goods and chattels owned and possessed by the decedent at the time of death of the value of..	599 00
100 shares of the capital stock of the Atlas National Bank of Chicago, par value $100 each.....	2,000 00
Total value of personalty	5,104,603 82

Summary.

Total personal property	$5,104,603.82
Total real property	236,793.00
Grand total	$5,341,396.82

Deductions.

Debts of decedent allowed	$4,568.70
Cost of administration allowed	151,138.11
Total deductions	$155,706 81
Clear, fair market value of decedent's estate	$5,185,690.01

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SCHEDULE III.

Taxable Estates and Interests Growing Out of the Estate of Timothy B. Blackstone, Deceased.

Estates, beneficiaries, relationship, and description of property.	Appraised fair market value.	Statutory exemption.	Rate.	Taxable cash value.
Ellen B. Plant, niece of said decedent, receives under the terms and provisions of his said last will and testament..	25,000.00	2,000	2%	23,000.00
William L. Harrison, grandnephew of said decedent, receives under the terms and provisions of his said last will and testament the sum of.	30,000.00	2,000	2%	28,000.00
Paul Harrison, grand nephew of said decedent, receives under the terms and provisions of his said last will and testament the sum of.	30,000.00	2,000	2%	28,000.00
Gertrude Harrison, grandniece of said decedent, receives under the terms and provisions of his said last will and testament the sum of.	20,000.00	2,000	2%	18,000.00
George Blackstone, nephew of said decedent, receives under the terms and provisions of his said last will and testament the sum of.	50,000.00	2,000	2%	48,000.00
52				
Adelaide Blackstone, niece of said decedent, receives under the terms and provisions of his said last will and testament the sum of.	20,000.00	2,000	2%	18,000.00
Mrs. Emma Pond, niece of said decedent, receives under the terms and provisions of his said last will and testament the sum of.	20,000.	2,000	2%	18,000.00

Schedule III—Continued.

Estates, beneficiaries, relationship, and description of property.	Appraised fair market value.	Statutory exemption.	Rate.	Taxable cash value.
William N. Blackstone, nephew of said decedent, receives under the terms and provisions of his said last will and testament the sum of	250,000.00	2,000	2%	248,000.00
Harriet B. Camp, niece of said decedent, receives under the terms and provisions of his said last will and testament the sum of	25,000.00	2,000	2%	23,000.00
Frances Ella Huntington, niece of said decedent, receives under the terms and provisions of his said last will and testament the sum of	25,000.00	2,000	2%	23,000.00
Lorenzo Blackstone, grand-nephew of said decedent, receives under the terms and provisions of his said last will and testament the sum of	25,000.00	2,000	2%	23,000.00
53				
Morton F. Plant, nephew of said decedent, receives under the terms and provisions of his said last will and testament the sum of	10,000.00	2,000	2%	8,000.00
William J. Bryson, stranger in blood to decedent, receives under the terms and provisions of his said last will and testament the sum of	15,000.00	None.	4%	15,000.00
Susan Jones, stranger in blood to decedent, receives under the terms and provisions of his said last will and testament the sum of	5,000.	None.	3%	5,000.00
James Blackstone Memorial Library Association of Branford, Connecticut, receives under the terms and provisions of decedent's last will and testament the sum of	100,000.	None.	6%	100,000.00
Art Institute of Chicago receives under the terms and provisions of decedent's last will and testament the sum of	25,000.00	None.	5%	25,000.00
Chicago orphan asylum receives under the terms and provisions of decedent's last will and testament the sum of	25,000.	None.	5%	25,000.00
Home for the Friendless, Chicago, receives under the terms and provisions of decedent's last will and testament the sum of	25,000.	None.	5%	25,000.00

Schedule III—Continued.

Estates, beneficiaries, relationship, and description of property.	Appraised fair market value.	Statutory exemption.	Rate.	Taxable cash value.
54				
St. Luke's hospital, Chicago, receives under the terms and provisions of decedent's last will and testament the sum of. ...	25,000.	None.	5%	25,000.00
Passavant Memorial hospital, Chicago, Illinois, receives under the terms and provisions of decedent's last will and testament the sum of.	25,000.	None.	5%	25,000.00
Chicago Relief and Aid Society, Chicago, Illinois, receives under the terms and provisions of decedent's last will and testament the sum of.	25,000.	None.	5%	25,000.00
Imbella F. Blackstone, widow of said decedent, receives under the terms and provisions of his said last will and testament all the rest, residue and remainder of his said estate, both real, personal and mixed, of every kind and nature and wherever situated; that the same is of the value as of the date of death of the sum of	4,385,690.01	20,000.	1%	4,365,690.01

55 SCHEDULE IV.

General Statement of Other Facts Relative to the Estates and Interests Growing Out of the Estate of Timothy B. Blackstone, Deceased.

The undersigned further reports that upon personal investigation he finds that the market value as of the date of death of the following-described stocks was as follows:

Capital stock of the Illinois Central Railroad Company $113 for each share of stock.

Kansas City, St. Louis and Chicago Railroad Company stock, market value $150 per share.

Joliet and Chicago Railroad Company stock, market value $150.

Chicago Auditorium Association stock, market value $10.00 per share.

Atlas National Bank of Chicago stock, market value $20.00 per share.

The undersigned further finds that the following-described assets of the estate of Timothy B. Blackstone, deceased, are of no value and not collectible.

Three bonds of the Chicago Athenæum Association.

An open account with Willis M. Hitt for the sum of $3,331.41.

An open account of George M. Bogue for the sum of $1,000.00.

An open account of J. H. Wood for the sum of $5,000.00.

The undersigned further finds that Mary A. Plant, sister of said decedent died prior to the death of said decedent, and that by reason of said death the legacy of the said Mary A. Plant mentioned in decedent's last will and testament has lapsed.

The undersigned further reports that counsel for the executrix of said estate objected to each and all of the findings herein, and that each and all of said objections to said findings were overruled, to which counsel then and there duly excepted.

56

EXHIBIT A.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the County Court of Cook County.

In the Matter of the Estate of TIMOTHY B. BLACKSTONE, Deceased.

I hereby enter the appearance and waive service of notice by mail, of Ellen B. Plant, William L. Harrison, Paul Harrison, Gertrude Harrison, George Blackstone, Adelaide Blackstone, Emma Pond, William H. Blackstone, Harriet B. Camp, Frances Ella Huntington, Lorenzo Blackstone, Morton F. Plant, William J. Bryson, Susan E. Jones, James Blackstone Memorial Library Association of Branford, Connecticut, Art Institute of Chicago, Chicago, orphan asylum, Home for the Friendless, Chicago, St. Luke's hospital, Passavant Memorial hospital, Chicago Relief & Aid Society, Isabella F. Blackstone, and that a hearing of the same may be had at room 310 100 Washington street, at the hour of two p. m., on the 2d day of November A. D. 1900, and thereafter from time to time, pursuant to adjournment before Oscar Hebel, Esq., appraiser, heretofore appointed by the county court; the above named being all the parties in interest in said estate.

57

WILLIAM BROWN,
Attorney for All Parties in Interest, Except for the Charitable Instituttions Last Named.
THE ART INSTITUTE, CHICAGO,
By W. H. CARPENTER, *Sec'y.*
CHICAGO & RELIEF AND AID SOC'Y,
By ERNEST A. HAMILL, *Its Treasurer.*
THE CHICAGO & HOME FOR THE FRIENDLESS,
By E. G. KEITH.
CHICAGO ORPHAN ASYLUM.
JOHN M. CLARK, *Vice-Pres.*

STATE OF ILLINOIS, } ss:
County of Cook, }

W. J. BRYSON, being first duly sworn, testified as follows:

Examined by Mr. WILLIAM BROWN:

Q. Mr. Bryson, where do you reside?
A. Chicago.
Q. How long have you resided here?
A. Thirty years.
Q. What were your relations to Timothy B. Blackstone?
A. I was his private secretary.
Q. Were you in that relation to him at the time of his death?
A. Yes.
Q. When did he die?
A. May 26th, 1900.
Q. I will ask you if by reason of your relation you had an intimate acquaintance with his property?
A. Yes, sir, I did.
Q. Who had charge of the property during his lifetime?
A. I did.
Q. Are you acquainted with lot 9 block 13 fractional section 15 being his property in Chicago?
A. Yes, sir.
58 Q. State, if you please, what in your judgment was the fair market cash value of that property on the 26th day of May, 1900.
A. About $150,000.
Q. Are you acquainted with the northeast quarter of section thirty-two township thirty-six, range one, one hundred and fifty-seven acres, in La Salle county, and the west three-fourths of the southeast quarter of section thirty-two, same township and range, one hundred and fourteen acres, in the same county—La Salle?
A. Yes, sir.
Q. State if you have had charge and supervision of it for the last fifteen or twenty years.
A. Yes.
Q. State in your judgment what it is worth.
A. It is worth about $29,000.
Q. Calling your attention to the third specified property in the inventory filed by Mrs. Blackstone, designated as unimproved property, and lots in Mendota, Ill., I will ask whether you are acquainted with them or not?
A. I am.
Q. You may state what is a fair valuation of those lots.
A. From $100 to $200 apiece.
Q. Directing your attention to the east half of the southeast quarter of section ten township forty-one range sixteen, Miller county, Mo., you may state whether that was improved or unimproved.
A. Unimproved.

Q. Has it ever been put to any use?

A. None whatever.

Q. State what, in your judgment, it is worth?

A. It is not worth more than $350, and I do not believe it is worth $100.

Q. Directing your attention to the east half of section nineteen and the southeast quarter of section twenty in Will county, Illinois, included in this inventory of Mrs. Blackstone's, you may state whether you know that property.

A. I do.

59 Q. State what in your judgment it is worth.

A. About $20,000.00, the fair cash value of it.

Q. I will ask you to state to the appraiser whether or not you have examined closely and carefully the specification of personal property described in the inventory now handed to you?

A. I have, yes.

Q. State whether or not that is a full, true and complete statement of all the personal property owned by Mr. Blackstone at the time of his death?

A. Yes, sir.

Q. There is no other?

A. No other.

Q. You may state whether or not in your judgment the valuations therein specified are a reasonable, fair cash value as to the particular items and the aggregate?

A. I think they are.

Examined by Mr. HEBEL:

Q. You testify that the inventory filed in the probate court of Cook county is a full and complete inventory of all the property, both real and personal, owned by Mr. Blackstone, the deceased?

A. I do.

Q. Everything he owned and possessed at the time of his death was included in that inventory filed in the probate court?

A. It was.

Q. You may state whether or not Mr. Blackstone conveyed away any of his property just prior to his death?

A. He did not.

Q. Did he place any funds or personal property in the hands of a trustee for the benefit of any third persons just prior to his death?

A. He did not.

Q. Did he convey to his wife any property either real or personal, just prior to his death?

A. No, sir.

Q. You may state whether all the beneficiaries named in the will are alive, or were alive at the date of Mr. Blackstone's death?

A. They were all alive except one.

Q. Which one?

A. Mary A. Plant.

60 Q. Can you state of your own knowledge when she died?

A. She died four or five weeks before Mr. Blackstone's death.

Statement of William Brown, Representing the Executrix of the Estate.

I desire to offer in evidence to the appraiser the order of the probate court approving the report and petition of the executrix as to the payment of the legacies named in the will, and also particularly that part of the adjudication or order of the probate court declaring the legacy of Mrs. Mary A. Plant lapsed.

Mr. BLACKSTONE examined by Mr. HEBEL:

Q. Can you state whether the relationship mentioned in will is the true one of each of the parties therein named?
A. Yes, sir.

Examined by Mr. BROWN:

Q. Please state if Mr. Blackstone at the time of his death was indebted to anybody other than for household expenses?
A. He was not.
Q. State whether those little indebtedness for household expenses and funeral expenses and the expenses of his last illness has been paid?
A. They have.
Q. By whom have they been paid?
A. His wife.
Q. The executrix of the will?
A. The executrix of the will.
Q. Out of her own funds?
A. Out of her own personal funds.
Q. Will you be kind enough to file with the appraiser a copy of the account showing what Mrs. Blackstone has paid out on that account?
A. I will do that.
Q. Will you be kind enough to furnish to the appraiser a statement of the deposits in New York which go to make up the aggregate of $4,854,148.96?
A. I will.

61 John T. O'Connell, real estate & loans, 88 Washington St.

CHICAGO, *October 20th*, 1900.

Estate of Timothy B. Blackstone, deceased; Oscar Hebel, appraiser.

Lot nine (9) block thirteen (13) fractional section fifteen (15) addition to Chicago. Said premises being the northwest corner of Michigan Ave. and Hubbard court, lot 80 x 173 feet to a 20-foot alley. Value $184,000.

I am of the opinion that the above valuation represents the present market value of the above-described property.

JOHN T. O'CONNELL.

Estate of T. B. Blackstone to I. F. Blackstone, Dr.

Sundry Bills Paid by I. F. Blackstone, Widow of the Late T. B. Blackstone, Prior to and Since the Time of His Death, Out of Her Personal Funds.

1900.		
M'ch 22.	Paid Gen'l O. O. Howard, donation	200.
Ap'l 3.	N. Shore poultry farm	4.05
	Pearson Dairy Co	7.44
5.	Wm. J. Bryson for March	250.00
	Laundry house bills	82.21
	Marshal-, Field & Co	41.40
	Vickery Bros	146.78
	John West	3.65
	Consumers' Co	28.50
	Edison Co	13.86
6.	Dr. Frank Billings	285.
7.	E. Wunhober	14.
May 21.	Electric fan	10.00
	Kindling wood	13.
62		
June 11.	Servants	320.
	C. P. Kimball & Co	21.
	Wm. J. Bryson for May	250.
	Kinsley and Bauman	28.90
	Sundry house bills	46.
	P. J. Hanswirth	11.75
	Horseshoeing and stable	32.
12.	Stanton & Co	24.14
	Vickery Bros	149.47
14.	Cone Bros. Co	37.50
15.	Consumers' Co	22.50
	Gas bills	11.20
20.	Western Electric Co	1.20
21.	Almine & Co	37.25
	Sinclair Bros	108.
June 21.	Funeral expenses	586.40
	Buffeum and Perego	649.
	A. Allen and Son	132.50
May 16.	Art Institute of Chicago	1,000.
		4,568.70

Appraiser's Report.

SCHEDULE II.

Inventory of Decedent's Estate.

Property.	Items.	Fair market value.
3 carriages	75.00 each	225.00
3 horses	75.00 "	225.00
2 double set harness	30.00	60.00
1 single " "	"	20.00
3 desks	10.00	30.00
1 table		5.00
3 book-cases	5.00	15.00
1 lounge		5.00
14 chairs	1.00	14.00
		$599.00

We the undersigned appraisers of the estate of Timothy B.
63 Blackstone, deceased, do hereby certify that the foregoing is a full just, and impartial appraisement of the personal estate of said deceased, subject to appraisement so far as the same has come to our sight or knowledge.

Witness our hands and seals this 25th day of September, 1900.

HARRY G. HALL, [SEAL.]
FRANK C. FARNUM, [SEAL.]
HENRY C. ANDERSON, [SEAL.]
Appraisers.

Approved in open court Sept. 26th, 1900.

JOHN H. BATTEN,
Acting Probate Judge of Cook County, Ills.

STATE OF ILLINOIS, }
County of Cook, } *ss:*

The People of the State of Illinois to Frank C. Farnum, Henry C. Anderson, Harry G. Hall, of the county of Cook and the State of Illinois, Greeting:

This is to authorize you jointly to appraise the goods, chattels and personal estate of Timothy B. Blackstone, late of the county of Cook, and State of Illinois, deceased, so far as the same shall come to your sight and knowledge, each of you having first taken oath hereto annexed, a certificate whereof you are to return, annexed to an appraisement bill of said goods, chattels and personal estate by you appraised in dollars and cents, and in the said bill of appraisement you are to set down in a column or columns, opposite to each article appraised, the value thereof.

Witness, James Reddick, clerk of probate court of Cook
[SEAL.] county, and the seal of said court, this 17th July, A. D. 1900.

JAMES REDDICK, *Clerk.*

64 We and each of us do solemnly swear that we will well and truly, without partiality or prejudice, value and appraise goods, chattels and personal estate of Timothy B. Blackstone, deceased, so far as the same shall come to our sight and knowledge, and that we will in all respects perform our duty as appraisers to the best of our skill and judgment.

FRANK C. FARNUM, [SEAL.]
HENRY C. ANDERSON, [SEAL.]
HARRY G. HALL, [SEAL.]
Appraisers.

Subscribed and sworn to before me, James Reddick, clerk of the probate court of Cook county, this 25th day of September, A. D. 1900.

JAMES REDDICK, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James Reddick, clerk of the probate court of Cook county, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the annexed and foregoing to be a true and correct copy of the appraisement approved on the 26th day of September, A. D. 1900, in the matter of the estate of Timothy B. Blackstone, deceased, as appears from the original on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said probate court at my office, in the city of Chicago, in said county, this 3d day of October, A. D. 1900.

[SEAL.] (Stamp.)

JAMES REDDICK,
Clerk of the Probate Court.

65 EXHIBIT "B."

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Probate Court Thereof, September Term, A. D. 1900.

In the Matter of the Estate of TIMOTHY B. BLACKSTONE, Deceased.

And now on this day comes Isabella F. Blackstone, executrix of the last will and testament of Timothy B. Blackstone, deceased, and exhibits and files this her inventory of the property, both real and personal belonging to the estate of Timothy B. Blackstone at the time of his death.

Real Property.

Lot 9, block 13, fran. sec. 15, add. to Chicago, improved. House and stable	$150,000.
N. E. ¼ sec. 32 T. 36 R. I. 157 acres La Salle Co. Ill. Improved. House & barn W. ½ and S. E. ¼ sec. 32 T. 36 R. I. 114 acres La Salle Co. Ill	29,693.
Unimproved subdiv. of N. 32 66 / a E. 45 44 / a S. E. ¼ Lot 6, bk. 2, Mendota, Ill.	
Unimproved subdiv. of N. 32 66 / a E. 45 44 / a S. E. ¼	200.00
Unimproved lot 12 bk. 2, Mendota, Ill	200.00
Unimproved lots 2 & 3 bk. 28 Mendota Ill	200.00
Unimproved lots 8 & 9 bk. 28 Mendota Ill	200.00
66 Unimproved W. 60 ft. lot 11 bk. 29 Mendota, Ill.	100.00
Unimproved lot 12 Mendota, Ill	200.00
Unimproved E. ½ S. E. ¼ sec. 10 T. 41 R. 16, Miller Co. Mo	350.00
Unimproved E. ½ sec. 19 Will Co. Ill. S. E. ¼ sec. 20 Will Co. Ill	22,000.00
	$203,143.00

Personal Property.

Deposit in bank, Chicago	$2,355.86
" " " New York city	4,854,148.96
500 shares Ill. Central R. R. stock	50,000.00
2 " Kansas City St. L. and Chicago R. R. stock.	200.00
528 shares Joliet and Chicago R. R. stock	52,800.00
121 shares Louisiana and Missouri River R. R. stock..	12,100.00
653 shares Ill. & Miss. Telegraph Co. stock	65,300.00
160 shares Union Rendering Co. stock	16,000.00
250 shares Chicago Auditorium Association stock	25,000.00
8 bonds Louisville & Nashville R. R. Co	8,000.00
4 bonds Miss. River Bridge Co	4,000.00
16 " (100. each Chicago Club)	1,600.00
	$5,091,504.82

100 shares Atlas nat. bank. No value.
3 bonds Chicago Athenæum Ass'n. No value.
Willis M. Hitt $3,331.41 doubtful
Geo. M. Bogue 1,000. "
J. H. Wood, 5,000. "

As per appraisement	599.

Recapitulation.

Real estate	$203,143.
Personal property	5,091,504.82
Appraisement	599.00
Total	$5,295,246.82

67 I, Isabella F. Blackstone, executrix of the last will and testament of Timothy B. Blackstone, deceased, do hereby certify that the foregoing is a full, true, complete and perfect inventory of all of the estate, both real and personal, belonging to the estate of said deceased, that has come to my hands, possession, sight or knowledge as such executrix.

(Signed) ISABELLA F. BLACKSTONE,
Executrix as Aforesaid.

September 25, A. D. 1900.

I, T. B. Blackstone, of the city of Chicago, county of Cook, and State of Illinois, being of sound mind and memory, do make publish and declare this to be my last will and testament hereby revoking all others by me heretofore made.

I.

I direct that all my just debts be paid as soon as conveniently may be after my decease.

II.

I give and bequeath to my sister Mary A. Plant the sum of fifty thousand dollars.

III.

I give and bequeath to my niece Ellen B. Plant the sum of twenty-five thousand dollars.

IV.

I give and bequeath to my grand-nephew William L. Harrison the sum of thirty thousand dollars.

V.

I give and bequeath to my grand-nephew Paul Harrison the sum of thirty thousand dollars.

VI.

I give and bequeath to my grandniece Gertrude Harrison the sum of twenty thousand dollars.

VII.

I give and bequeath to my nephew George Blackstone the sum of fifty thousand dollars.

68 VIII.

I give and bequeath to my niece Adelaide Blackstone the sum of twenty thousand dollars.

IX.

I give and bequeath to my niece Mrs. Emma Pond the sum of twenty thousand dollars.

X.

I give and bequeath to my nephew William N. Blackstone the sum of two hundred and fifty thousand dollars.

XI.

I give and bequeath to my niece Harriet B. Camp the sum of twenty-five thousand dollars.

XII.

I give and bequeath to Frances Ella Huntington the sum of twenty-five thousand dollars.

XIII.

I give and bequeath to my grand-nephew Lorenzo Blackstone the sum of twenty-five thousand dollars.

XIV.

I give and bequeath to my nephew Morton F. Plant the sum of ten thousand dollars.

XV.

I give and bequeath to my friend William J. Brysen the sum of fifteen thousand dollars.

XVI.

I give and bequeath to Susan E. Jones the sum of five thousand dollars.

XVII.

I give and bequeath to the James Blackstone Memorial Library Association of Branford, Connecticut, the sum of one hundred thousand dollars.

XVIII.

I give and bequeath to the "Art Institute of Chicago" the sum of twenty-five thousand dollars.

69

XIX.

I give and bequeath to the "Chicago orphan asylum" the sum of twenty-five thousand dollars.

XX.

I give and bequeath to the "Home for the Friendless" of and located in the city of Chicago, Illinois, the sum of twenty-five thousand dollars.

XXI.

I give and bequeath to "St. Luke's Hospital" of Chicago, Illinois, the sum of twenty-five thousand dollars.

XXII.

I give and bequeath to the "Passavant Memorial Hospital" of Chicago, Illinois, the sum of twenty-five thousand dollars.

XXIII.

I give and bequeath to the "Chicago Relief and Aid Society" of Chicago, Illinois, the sum of twenty-five thousand dollars.

XXIV.

I direct that the foregoing bequests shall be paid to the respective persons and the proper officer or officers of the respective corporations as soon after my decease as shall be convenient to my executrix; and to the end that the same may be seasonably and conveniently paid to the proper persons and corporations according to the intent expressed herein I hereby authorize and empower my executrix, in her discretion to make use of any of my bonds, stock or other securities and to use the same as so much money at their market value without converting such securities into money. This discretion is vested in my executrix exclusively and she may convert such securities into cash to pay each or all of the foregoing bequests or use the securities at their market value as she may deem most expedient.

70 XXV.

All the rest, remainder and residue of my estate, real, personal and mixed of every kind and nature and wherever situated, I give, devise and bequeath to my wife Isabella F. Blackstone and to her heirs, executors, administrators and assigns as and for her absolute estate and property forever.

XXVI.

I do nominate and appoint my wife, Isabella F. Blackstone to be the sole executrix of this my last will and testament and I do direct that she shall not be required to give any security on her bond as such executrix.

In witness whereof, I have hereunto set my hand and seal this second day of September, in the year of our Lord one thousand eight hundred and ninety-eight.

(S'g'd) T. B. BLACKSTONE. [SEAL.]

The foregoing instrument of writing composed of four half sheets and written upon only one side was on this second day of September, 1898, signed, sealed, published and declared by the said T. B. Blackstone as and for his last will and testament in our presence and we at his request and in his personal presence and in the presence of each other have hereunto signed our names as subscribing witnesses thereto.

(S'g'd) WM. BROWN,
Of Jacksonville, Ills.
WM. BROWN, JR.

Appraiser's Report.

The foregoing including the several schedules herein together with Exhibits "A" and "B" hereto attached, constitute a full and correct report of said appraisement is made by me pursuant to said order of appraisement.

Respectfully submitted this 26th day of November, A. D. 1900.

OSCAR HEBEL, *Appraiser.*

71 STATE OF ILLINOIS, } ss:
Cook County, }

Oscar Hebel, being duly sworn, says: That the foregoing report by him subscribed is a true and correct report of the appraisement made by him in the matter of said estate, and that he has faithfully and fairly performed the duties of such appraiser, according to the best of his understanding. OSCAR HEBEL.

Subscribed and sworn to before me this 26th day of November, A. D. 1900. PHILIP KNOPF,
County Clerk.

And on the same day, to wit, the 26th day of November, A. D. 1900, the following among other proceedings were had, and entered of record, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

Before the Hon. Orrin N. Carter, County Judge of Cook County.

In the Matter of the Estate of TIMOTHY B. BLACKSTONE, Deceased.

Upon the report of Oscar Hebel the appraiser heretofore duly appointed to appraise the value of the property of the estate of said decedent subject to taxation, under and pursuant to the statutes of this State relating to the taxation of gifts, legacies and inheritances, this day presented and read, it appearing that said decedent Timothy B. Blackstone died on the 26th day of May, A. D. 1900, seized
72 of property subject to taxation pursuant to said statutes, and that due notice of the time and place of said appraisement was duly given to all persons known to have or claim any interest in said property and to such persons as were by order of the county judge directed; and it further appearing that the said Oscar Hebel, appraiser, has appraised the said property of said estate at its fair market value.

It is therefore ordered, that the said report of appraisement be and the same is hereby approved, and that the said report together with the depositions of witnesses and exhibits in said estate taken and returned herein be forthwith filed in the office of the clerk of the county court of Cook county, and

It is further ordered upon said report that the cash value of the several estates, annuities and life estates or terms of years growing out of the said estate of Timothy B. Blackstone, deceased, subject to taxation under said statutes and the tax to which the same are severally liable be and the same are hereby assessed and fixed as follows:

73 Beneficiary, relationship, and description of property.	Appraised value.	Exemptions.	Cash value of estate.	Tax.
Ellen B. Plant, niece of said decedent receives under the terms and provisions of his said last will and testament the sum of	25,000.00	2,000.	23,000.	460.00
William L. Harrison, grand-nephew of said decedent receives under the terms and provisions of his last will and testament the sum of	30,000.00	2,000.	28,000.	560.00
Paul Harrison, grand-nephew of said decedent receives under the terms and provisions of his said last will and testament the sum of	30,000.00	2,000.	28,000.	560.00
Gertrude Harrison, grandniece of said decedent receives under the terms and provisions of his last will and testament the sum of	20,000.	2,000.	18,000.	360.00
George Blackstone, nephew of said decedent receives under the terms and provisions of his said last will and testament the sum of	50,000.	2,000.	48,000.	960.00
Adelaide Blackstone, niece of said decedent receives under the terms and provisions of his said last will and testament the sum of	20,000.	2,000.	18,000.	360.00
Mrs. Emma Pond, niece of said decedent receives under the terms and provisions of his said last will and testament the sum of	20,000.	2,000.	18,000.	360.00
William N. Blackstone, nephew of said decedent receives under the terms and provisions of his said last will and testament the sum of	250,000.	2,000.	248,000.	4,960.00
74 Harriet B. Camp, niece of said decedent receives under the terms and provisions of his said last will and testament the sum of	25,000.	2,000.	23,000.	460.00
Frances Ella Huntington, niece of said decedent receives under the terms and provisions of his said last will and testament the sum of	25,000.	2,000.	23,000.	460.00
Lorenzo Blackstone, grand-nephew of said decedent receives under the terms and provisions of his said last will and testament the sum of	25,000.00	2,000.00	23,000.00	460.00
Morton F. Plant, nephew of said decedent receives under the terms and provisions of his said last will and testament the sum of	10,000.	2,000.	8,000.	160.00
William J. Bryson, stranger in blood to said decedent receives under the terms and provisions of his said last will and testament the sum of	15,000.	None.	15,000.	600.00
Susan E. Jones, stranger in blood to said decedent receives under the terms and provisions of his said last will and testament the sum of	5,000.	None.	5,000.	150.00
James Blackstone Memorial Library Association of Branford, Connecticut, receives under the terms and provisions of decedent's said last will and testament the sum of	100,000.	None.	100,000.	600.00
Art Institute of Chicago receives under the terms and provisions of decedent's said last will and testament the sum of	25,000.	None.	25,000.	1,250.00
Chicago orphan asylum receives under the terms and provisions of decedent's said last will and testament the sum of	25,000.	None.	25,000.	1,250.00

75 Home of the Friendless, Chicago, receives under the terms and provisions of decedent's said last will and testament the sum of	25,000.	None.	25,000.	1,250.00
St. Luke's hospital, Chicago, receives under the terms and provisions of decedent's last will and testament the sum of	25,000.00	None.	25,000.	1,250.00
Passavant Memorial hospital, Chicago, Illinois, receives under the terms and provisions of decedent's last will and testament the sum of	25,000.	None.	25,000.	1,250.00
Chicago Relief and Aid Society, Chicago, Illinois, receives under the terms and provisions of decedent's said last will and testament the sum of	25,000.	None.	25,000.	1,250.00
Isabella F. Blackstone, widow of said decedent, receives under the terms and provisions of his said last will and testament all the rest, residue and remainder of his said estate, both real and personal and mixed, of every kind and nature and wherever situate; that the same is of the value, as of the date of death of	4,385,690.01	20,000.	4,365,690.01	43,656.90

76 That the real estate succeeded to by the above named is described as follows:

Lot nine (9) block thirteen (13) fractional section fifteen (15) addition to Chicago. Improved.

Northeast quarter (¼) of section thirty-two (32) township thirty-six (36) range one (1) being one hundred and fifty-seven (157) acres in La Salle county, Illinois; also the west three-quarters (¾) and the southeast quarter (¼) of section thirty-two (32) township thirty-six (36) range one (1) being one hundred and fourteen (114) acres in La Salle county, Illinois, improved with a house and barn on the above-described property.

Subdivision of the north 32 66/a east 45 44/a in the southeast quarter (¼) lot six (6) block two (2) Mendota, Illinois.

Subdivision of north 32 66/a east 45 44/a southeast quarter (¼) lot twelve (12) block — (2) Mendota, Illinois.

Lots two (2) and three (3) block twenty-eight (28) Mendota, Illinois.

Lots eight (8) and nine (9) block twenty-eight (28) Mendota, Illinois.

West sixty (60) feet of lot eleven (11) block (29) Mendota, Illinois.

Lot twelve (12) block twenty-nine (29) Mendota, Illinois.

East half (½) of section nineteen (19) Will county, Illinois, also southeast quarter (¼) of section twenty (20) Will county, Illinois.

It is further ordered that the appraisement returned by the appraiser in his said report together with the cash value of the several estates, annuities, life estates and terms of years and other property growing out of said estate of Timothy B. Blackstone, deceased, and the tax thereon as assessed and fixed therein be entered in the public inheritance tax record of this county.

ORRIN N. CARTER,
County Judge.

77 UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
Cook County, }

I, Philip Knopf, clerk of the county court of Cook county, and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain appraiser's report filed November 26th, A. D. 1900, and a certain order fixing tax, entered of record November 26th, 1900. In the matter of the estate of Timothy B. Blackstone, deceased.

In witness whereof, I have hereunto set my hand and
General affixed the seal of said court, at Chicago, in said county,
No. 723. this 13th day of December, 1900.

[SEAL.] PHILIP KNOPF, *Clerk.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Orrin N. Carter, county judge of Cook county, and sole presiding judge of the county court of Cook county, in the State of Illinois, do hereby certify that Philip Knopf, Esq., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same, the clerk of the county court of Cook county, aforesaid, and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are, and of right ought to be, given to all his official acts as such, in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal, at my chambers in Chicago, this 13th day of December, A. D., 1900.

ORRIN N. CARTER, [SEAL.]
County Judge.

78 *Clerk's Certificate of Judge's Signature.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Philip Knopf, clerk of the county court of Cook county, in the State of Illinois (said court being a court of record), do hereby certify that the Hon. Orrin N. Carter, whose name is subscribed to the annexed and foregoing certificate, was, at the time of the signing thereof, and now is, the county judge of said Cook county, and sole presiding judge of said county court of Cook county, duly elected, commissioned and qualified, and that his said signature is genuine.

In witness whereof, I have signed my name and affixed the seal of said county court, at my office in the city of Chicago, in said Cook county, this 13th day of December, 1900.

[SEAL.] PHILIP KNOPF, *Clerk.*

EXHIBIT E.

Inheritance Tax Receipt.

(Duplicate.)

No. 553.

Office of the county treasurer.

CHICAGO, ILL., *November 26th*, 1900.

STATE OF ILLINOIS, } ss:
Cook County, }

Received of Isabella F. Blackstone, executrix of the estate of Timothy B. Blackstone, deceased, sixty-four thousand six hundred and twenty-five and 56/100 dollars ($64,625 56/100) the same being in full for the inheritance tax levied and assessed upon the right of succession to a certain devise, legacy, inheritance of the following-described property, to wit:

79 Description.	Section.	Town.	Range.	Sublot.	Lot.	Block.	Appraised value.	Cash value taxed.	Tax rate.	Amount of tax.
Real estate in Cook county, Illinois.										
Fractional section 15 add. to Chicago	15	39	14			13				
					9	"				
Real estate in La Salle county, Illinois.										
N. E. ¼	32	16	1							
W. ½ S. E. ¼	32	16	1							
Subd. of N. 32 66/100 acs.	32	16	1		6	2				
					12	"				
E. 45 44/100 acs. S. E. ¼					2	28				
					3	"				
Village of Mendota					8	"				
		W	60 ft.		9	"				
					11	29				
					12	"				
Real estate in Will county, Illinois.										
E. ½	19	32	9							
S. E. ¼	20	32	9							
Total value of real estate							236,793			
Total value of personal property as per inventory							5,104,603.82			
Total value of estate							5,341,396.82			
Less costs and claims allowed						155,706.81				
Less total exemptions						44,000	199,706.81			
Carried forward							5,141,690.01			

		Appraised value.	Cash value taxed.	Tax rate.	Amount of tax.
Brought forward			5,141,690.01		
Tax assessed upon the rights of succession to legacies and devises growing out of the above-described estate of Timothy B. Blackstone, deceased, as devised under the last will and testament of said decedent, as follows:					
Ellen B. Plant, niece of decedent		25,000.00	23,000.00	2%	
Gross tax	460.				
Less five per centum	23.				
Net tax					437.00
William L. Harrison, nephew of decedent		30,000.00	28,000.00	2%	
Gross tax	560.00				
Less five per centum	28.00				
Net tax					532.00
Paul Harrison, nephew of decedent		30,000.00	28,000.00	2%	
Gross tax	560.00				
Less five per centum	28.00				
Net tax					532.00
Gertrude Harrison, niece of decedent		20,000.00	18,000.00	2%	
Gross tax	360.00				
Less five per centum	18.00				
Net tax					342.00
Carried forward					1,843.00

3235

		Appraised value.	Cash value taxed.	Tax rate.	Amount of tax.
81					
Brought forward					1,843.00
George Blackstone, nephew of decedent		50,000.00	48,000.00	2%	
Gross tax	960.00				
Less five per centum	48.00				
Net tax					912.00
Adelaide Blackstone, niece of decedent		20,000.00	18,000.00	2%	
Gross tax	360.00				
Less five per centum	18.00				
					342.00
Mrs. Emma Pond, niece of decedent		20,000.00	18,000.00	2%	
Gross tax	360.00				
Less five per centum	18.00				
Net tax					342.00
William N. Blackstone, nephew of decedent		250,000.00	248,000.00	2%	
Gross tax	4,960.00				
Less five per centum	248.00				
Net tax					4,712.00
Harriet B. Camp, niece of decedent		25,000.00	23,000.00	2%	
Gross tax	460.00				
Less five per centum	23.00				
Net tax					437.00
Carried forward					8,588.00

82					
Brought forward					8,588.00
Frances Ella Huntington, niece of decedent		25,000.00	23,000.00	2%	
Gross tax	460.00				
Less five per centum	23.00				
Net tax					437.00
Lorenzo Blackstone, nephew of decedent		25,000.00	23,000.00	2%	
Gross tax	460.00				
Less five per centum	23.00				
Net tax					437.00
Morton F. Plant, nephew of decedent		10,000.00	6,000.00	2%	
Gross tax	160.00				
Less five per centum	8.00				
Net tax					152.00
William J. Bryson, stranger in blood		15,000.00	15,000.00	4%	
Gross tax	600.00				
Less five per centum	30.00				
Net tax					570.00
Susan Jones, stranger in blood		5,000.00	5,000.00	3%	
Gross tax	150.00				
Less five per centum	7.50				
Net tax					142.50
James Blackstone Memorial Library Association		100,000.00	100,000.00	6%	
Gross tax	6,000.00				
Less five per centum	300.00				
Net tax					5,700.00
Art Institute of Chicago		25,000.00	25,000.00	5%	
Gross tax	1,250.00				
Less five per centum	62.50				
Net tax					1,187.50

33236

		Appraiced value.	Cash value taxed.	Tax rate.	Amount of tax.
83	Chicago orphan asylum	25,000.00	25,000.00	5%	
	Gross tax 1,250.00				
	Less five per centum 62.50				
	Net tax				1,187.50
	Home for the Friendless, Chicago	25,000.00	25,000.00	5%	
	Gross tax 1,250.00				
	Less five per centum 62.50				
	Net tax				1,187.50
	St. Luke's hospital, Chicago	25,000.00	25,000.00	5%	
	Gross tax 1,250.00				
	Less five per centum 62.50				
	Net tax				1,187.50
	Passavant Memorial hospital, Chicago	25,000.00	25,000.00	5%	
	Gross tax 1,250.00				
	Less five per centum 62.50				
	Net tax				1,187.50
	Chicago Relief and Aid Society, Chicago	25,000.00	25,000.00	5%	
	Gross tax 1,250.00				
	Less five per centum 62.50				
	Net tax				1,187.50
	Isabella F. Blackstone, widow of decedent	4,385,690.01	4,385,690.01	1%	
	Gross tax 43,656.90				
	Less five per centum 2,182.84				
	Net tax				41,474.06
					$64,625.56

S. B. RAYMOND, *County Treasurer.*

84 STATE OF ILLINOIS, } ss:
Cook County, }

I, Philip Knopf, county clerk of the county court in and for said county, do hereby certify that S. B. Raymond, Esq., is the treasurer in said county, duly commissioned and sworn, and whose acts as such are entitled to credit; that his commission bears date of December 3d, A. D. 1898, and will expire in December, A. D. 1902.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Chicago, in said county, this 10th day of December, 1900.

PHILIP KNOPF, *Clerk.*

Affidavit Submitted by Executrix, Read on Behalf of Appellant.

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COUNTY OF NEW YORK, ss:

Henry L. Thornell, being duly sworn, deposes and says:

First. That he resides in the city of New York and is the
85 secretary of the United States Trust Company of New York.

Said trust company was incorporated and exists under chapter 204 of the Laws of 1853, as amended by chapter 60 of the Laws of 1863, by chapter 309 of the Laws of 1874, by chapter 433 of the Laws of 1892, and by the general banking law of the State of New York.

Second. That he has read the answering affidavit herein, verified by Isabella F. Blackstone, individually and as executrix, etc., of Timothy B. Blackstone, deceased, on the 17th day of December, 1900, and that said affidavit, so far as it relates to the deposit made by said Timothy B. Blackstone, on the 31st day of March, 1899, with said trust company, is true; the agreement for such deposit was embodied in a letter from said Timothy B. Blackstone to said trust company, dated March 16, 1899, an answer thereto, dated March 16, 1899, two further communications from said Timothy B. Blackstone, dated March 29, 1899, and a letter of acknowledgment to him from said trust company dated March 31, 1899, copies of such correspondence are hereto annexed, marked Exhibits A, B, C, D and E, respectively, and made part of this affidavit; such deposit was made by transferring the sum of $4,881,522.21 from the account with said trust company to the credit of the persons associated together in the purchase of the stock of the Chicago and Alton Railroad Company, to a separate account to the credit of said Timothy B. Blackstone; such transfer consisted in book entries and the drawing of said trust company's check to its own order as a memorandum charge of the transaction, subject only to the right of said trust company to ask for two days' notice if a draft for more than $100,000 was made, this

deposit could have been withdrawn at any time by said Timothy B. Blackstone; said trust company issued no certificate of deposit nor pass book at the time it undertook such deposit; and the only
86 entry evidencing such deposit was the account so opened in said trust company's ledger, entitled "Deposits in trust. Draft account." A true copy of such account, showing the balance due thereon, as of May 26th, 1900, is hereto annexed as part of this affidavit, and marked Exhibit F.

Third. That said trust company is not by law authorized to do and does not in fact do the business of an ordinary bank of deposit; said trust company neither receives nor pays out, nor keeps in its possession any cash; it is not required by law to maintain, nor does it maintain any lawful money reserve, and all its contracts of deposit are in terms to be repaid in current funds; substantially all deposits made with said trust company are in the form of checks, drafts or other orders for the payment of money; these deposits are in their turn deposited by said trust company in one of its regular banks of deposit for collection, and the funds are drawn out of said banks by checks drawn upon them by said trust company; deposits with said trust company are paid either by a check drawn by it upon one of its banks of deposit, or drawn upon it and paid by a check drawn upon one of said banks; in the case of its ordinary deposits said trust company has the right of five days' notice before it can be called upon to repay the amount deposited; this right although not ordinarily availed of enables the trust company safely and profitably to keep all but a comparatively small portion of its assets permanently invested in loans on collateral, United States Government bonds, New York City bonds, corporate stocks and bonds, bonds and mortgages and other securities, and that on the 26th day of May, 1900, its assets were so fully invested that it did not have on deposit in any bank or banks a sum in excess of $3,800,000.

87 Fourth. That the corporate procedure outlined in the foregoing paragraph of this affidavit was part of the deposit agreement of March 31, 1899, made with said trust company by the said Timothy B. Blackstone, deceased, and regulated all of said trust company's transactions in connection with such deposit.

H. L. THORNELL.

Sworn before me this 10th day of January, 1901.

DANIEL MOYNAHAN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

EXHIBIT A.

(Copy.)

CHICAGO, *March 16th*, 1899.

John A. Stewart, Esq., pres't U. S. Trust Co., 47 Wall St., New York.

DEAR SIR: There are several parties who desire to purchase the Chicago and Alton shares owned by me and those with the care of which I am especially charged. Should I agree to sell them I shall be glad if you will kindly advise me whether I am at liberty to make it one of the conditions of the sale that the price agreed upon shall be deposited with the U. S. Trust Co., for my account. If I sell my stock I am at a loss to know how I can safely invest the proceeds, and may wish to deposit a considerable sum for several months with the U. S. Trust Co.

Having no information relative to the rules or practice of the trust Co., I shall be glad if you will advise me as to the terms upon which I would be permitted to deposit and withdraw the
88 same, assuming that present rates for money continue without material change.

Very truly yours, T. B. BLACKSTONE.

EXHIBIT B.

NEW YORK, *March 18th*, 1899.

T. B. Blackstone, Esq., Chicago.

MY DEAR SIR: Your favor of the 16th instant has been received this day. In the absence of Mr. Stewart I desire to say, that in case of sale by you of the stock referred to, we would be willing to accept on deposit for your account the proceeds of such sale, holding the same subject to your order by draft on us, and allow interest thereon at the rate of two per cent. per annum, subject, however, to reduction in the rate of interest, if we so elect, upon notice to you.

Should payments be required in excess of $100,000 at any time, we should expect to receive at least two days' notice of your intention to draw upon us.

Very truly, J. S. CLARK,
2d Vice-President.

EXHIBIT C.

(Copy.)

CHICAGO, *March* 29, '99.

United States Trust Company of New York, 45 Wall street, New York city.

GENTLEMEN: I hand you herewith for deposit and sale under the agreement concerning purchase of stock of the Chicago and Alton Railroad Company, lodged with you, dated January 28, 1899, between John J. Mitchell and others, certificates Nos.:

8—423

89

	B't forward: 3000	B't forward: 7900
118– 100 shares	B 2439– 100 shares.	A 5395– 100 shs.
150– 100 "	3886– 100 "	5419
151– 100 "	3887– 100 "	to
366– 100 "	3889– 100 "	5425– 700 "
367– 100 "	3897– 100 "	5449– 100 "
369– 100 "	4034– 100 "	5450– 100 "
381– 100 "	4035– 100 "	5453– 100 "
764– 100 "	4036– 100 "	5512– 100 "
765– 100 "	4037– 100 "	5513– 100 "
889– 100 "	4038– 100 "	5523– 100 "
973– 100 "	4314– 100 "	5525– 100 "
974– 100 "	4315– 100 "	5564– 100 "
1143– 100 "	4341– 100 "	5565– 100 "
1144– 100 "	4342– 100 "	5583– 100 "
1215– 100 "	4343– 100 "	5584– 100 "
1216– 100 "	4344– 100 "	5585– 100 "
1217– 100 "	4345– 100 "	5692
1218– 100 "	4346– 100 "	to
1269– 100 "	4369	5717–2600 "
1561– 100 "	to	
1562– 100 "	4388–2000 "	6009
1563– 100 "	4499– 100 "	to
1564– 100 "	4500– 100 "	6028–2000 "
1565– 100 "	4501– 100 "	B 138– 50 "
2058– 100 "	4502– 100 "	245– 50 "
2059– 100 "	4503– 100 "	271– 50 "
2060– 100 "	4504– 100 "	1186– 50 "
2061– 100 "	4505– 100 "	1506– 50 "
2062– 100 "	4882– 100 "	1507– 50 "
2438– 100 "	4919– 100 "	1546– 50 "
	4920– 100 "	1773– 50 "
Forward 3000	5328– 100 "	C 320– 25 "
		3840– 31 "
	Forward 7900	6953– 38 "
		7760– 26 "
		8940– 38 "
		10650– 4 "
		12435– 15 "
		Total.. 15077 "

of the common stock of the Chicago and Alton Railroad Company, for which please credit net proceeds in account with myself to be held as a deposit upon your usual terms as to interest and withdrawal of the same and oblige.

T. B. BLACKSTONE.

90

EXHIBIT D.

(Copy.)

CHICAGO, *March 29th*, 1899.

United States Trust Company of New York, 45 Wall St., New York city.

GENTLEMEN: I hand you herewith for deposit and sale, under the agreement once concerning purchases of stock of the Chicago and Alton Railroad Company, lodged with you dated January 28, 1890, between John J. Mitchell and others, certificates Nos.

		B't forward:	9000			B't forward:	10944		
4531–	100	shares	A 581–	100	shares	B 1495–	40	shares
A 133–	100	"	583–	100	"	1504–	10	"
135–	100	"	678–	100	"	1565–	35	"
145–	100	"	679–	100	"	1635–	52	"
261–	100	"	680–	100	"	1646–	5	"
278–	100	"	681–	100	"	1647–	60	"
281–	100	"	682–	100	"	1652–	31	"
282–	100	"	684–	100	"	1661–	22	"
A 284			685–	100	"	1676–	20	"
to			686–	100	"	1700–	50	"
348–6500		"	687–	100	"	1717–	54	"
A 501–	100	"	688–	100	"	1729–	43	"
504–	100	"	691–	100	"	1731–	49	"
505–	100	"	692–	100	"	1733–	5	"
508–	100	"	693–	100	"	1738–	11	"
509–	100	"	694–	100	"	1769–	10	"
511–	100	"	698–	100	"	1771–	5	"
512–	100	"	B 370–	45	"	1772–	4	"
529–	100	"	395–	5	"			
530–	100	"	446–	50	"	Total:	11450	
532–	100	"	478–	10	"			
544–	100	"	1143–	50	"			
545–	100	"	1252–	60	"			
548–	100	"	1272–	20	"			
550–	100	"	1393–	4	"			
551–	100	"						
552–	100	"	Forward:	10944				
561–	100	"						
Forward:	9000							

of the preferred stock of the Chicago and Alton Railroad Company for which please credit net receipts in account with myself to be held as a deposit upon your usual terms as to interest and withdrawal of the same and oblige.

T. B. BLACKSTONE.

91 EXHIBIT E.

(Copy.)

NEW YORK, *March* 31*st*, 1899.

T. B. Blackstone, Esq., Chicago, Illinois.

DEAR SIR: I beg to acknowledge the receipt of your favor of the 29th instant, and by express certificates for 11,450 of preferred and 15,077 shares of Chicago and Alton common stock owned by yourself; also certificates for 49 shares of preferred and 16,700 common stock belonging to the estate of H. B. Norton, deceased, for which you are trustee, all of said shares being deposited with this company under the agreement between John J. Mitchell and E. H. Harriman and others for which stock payment has been made for your personal account of $4,881,522.21, and as trustee of the Norton estate of $299,527.06.

In compliance with your directions, these several amounts have been deposited with this company to your individual credit and as executor, as per advices herewith. For the present, and until further advised, the rate of interest to be allowed on each of these deposits will be two and one-half per cent. instead of two per cent. as heretofore mentioned.

The Chicago & Alton transfer agents think it desirable that you execute and return to us the accompanying powers of attorney, in order to save to you the expense of twenty-five cents on each separate stock certificate which would otherwise be required under the internal-revenue law.

Very truly yours, JOHN A. STEWART, *President.*

EXHIBIT F.

Timothy B. Blackstone in account with the United States Trust Company of New York.

DR.			CR.		
1899.			1899.		
June 24.	To cash	$5,000	M'ch 31.	By cash	$4,881,522 21
July 27.	" "	75,000	1900.		
Aug. 9.	" "	26,224 11	M'ch 31.	" int. U. S. T. Co. to M'ch 31, 1900	132,425 83
Nov. 6.	" "	5,000		" int. U. S. T. Co. to May 26, 1900 (credited Aug. 9, 1900)	22,497 79
" 18.	" "	50,000			
Dec. 4.	" "	5,000			
" 21.	" "	9,765			
1900.					
Jan'y 12.	" "	5,000			
" 26.	" "	1,000			
" 27.	" "	5,000			
Feb'y 23.	" "	1,000			
M'ch 3.	" "	5,000			
	" balance	4,843,456 72			
	Total	$5,036,445 83		Total	$5,036,445 83
			May 26.	By balance	$4,843,456 72

3324

93 *Affidavit Submitted by Executrix, Read on Behalf of Appellant.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COUNTY OF NEW YORK, *ss:*

William J. Bryson, being duly sworn, deposes and says that he resides in the city of Chicago, Illinois, and was for twenty years prior to May, 1900, the private secretary of Timothy B. Blackstone, the decedent above named, that in that capacity deponent was well acquainted with the property of said decedent, and had charge of that property, under the decedent's direction, during his lifetime; that he has read the answering affidavit herein of Isabella F. Blackstone, individually and as executrix of the last will and testament of said Timothy B. Blackstone, deceased, verified the 17th day of December, 1900, and believes all the allegations of fact therein contained to be true; that the expenses of administration and debts, amounting to $155,706.81, which as shown in said affidavit were deducted from said estate as assessed for taxation under the Illinois inheritance tax law, included only a portion of the commissions of said executrix which at the rate of six per cent. of the decedent's personal estate had prior thereto been duly allowed her by
94 the probate court of Cook county, Illinois; that the balance of said commissions not so deducted amounted to upwards of $175,000; that all of said commissions, administration expenses and debts, aggregating more than $330,706.81, were paid by the executrix out of the deposit with the United States Trust Company of New York, mentioned in said affidavit; that the Federal legacy tax assessed against decedent's estate under the war-revenue act of 1898, and the $800,000 of general legacies given by the will of decedent, were also paid by said executrix out of the same fund; that said decedent prior to March 31, 1899, told deponent that he intended to leave with said trust company temporarily the proceeds of sale of decedent's Chicago and Alton stock until he could reinvest said proceeds permanently in satisfactory corporate stocks or bonds of the kind usually purchased by investors in the United States, and to keep these stocks and bonds in the city of Chicago; that during his lifetime he actually invested a portion of such proceeds in stock of the Illinois Central Railroad Company which he bought on the New York stock exchange, but was prevented by his increasing ill health from investing the remainder thereof; that decedent expressed to deponent several times the disappointment which decedent felt, that owing to such ill health, he was unable to complete the investment of said proceeds, and said to deponent that such inability was resulting in great pecuniary loss to him; that in the case of the proceeds of the Chicago and Alton stock belonging to the

trust estate held by decedent as trustee under the will of Henry B. Norton, a deceased citizen of Connecticut, decedent succeeded in completing such investment before August 10, 1899, by purchasing in the city of Chicago various corporate stock and bonds, and
95 that such stocks and bonds were never within the State of New York.

WM. J. BRYSON.

Sworn to before me this 9th day of January, 1901.
DANIEL MOYNAHAN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

Affidavit Submitted by Executrix, Read on Behalf of Appellant.

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COUNTY OF NEW YORK, *ss:*

Albert Wick, being duly sworn, deposes and says that he is upwards of twenty-one years of age, and is a clerk in the office of Edward W. Sheldon, the attorney in this proceeding for Isabella F. Blackstone, individually and as executrix, etc., of Timothy B. Blackstone, deceased; that deponent has examined the records in the surrogate's court for the county of New York, in the estate of Frederic Bronson; that by the transfer tax appraiser's report filed in this court in the estate of said Frederic Bronson on the 2d day of
96 October, 1900, a balance to the credit of the decedent at the time of his death with the Bridgeport bank, of Bridgeport, Connecticut, amounting to $657.14, was appraised as subject to the transfer tax and final order fixing the tax upon said appraisal was thereafter duly entered; that said decedent Frederic Bronson was a resident of the county of New York at the time of his death; that no appeal has been taken from said final order, and that the time for such appeal has expired.

ALBERT WICK.

Sworn to before me this 9th day of January, 1901.
DANIEL MOYNAHAN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

97 *Order Fixing Tax, Read on Behalf of Respondent.*

At a surrogate's court, held in and for the county of New York, at the county court-house, in the county of New York, on the 20th day of February, 1901.

Present: The Honorable Abner C. Thomas, surrogate.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Upon reading and filing the report of Charles B. Page, the appraiser herein, dated the 19th day of February, 1901, it is

Ordered, that the cash value at the date of decedent's death of the property, the transfer of which is liable to taxation in this proceeding, and the tax to which the same is liable, are as follows:

98 Name of beneficiary.	Cash value.	Tax.
Ellen B. Plant, niece	$25,000	$1,250.00
William L. Harrison, grand-nephew	30,000	1,500.00
Paul Harrison, grand-nephew	30,000	1,500.00
Gertrude Harrison, grandniece	20,000	1,000.00
George Blackstone, nephew	50,000	2,500.00
Adelaide Blackstone, niece	20,000	1,000.00
Emma Pond, niece	20,000	1,000.00
William N. Blackstone, nephew	250,000	12,500.00
Harriet B. Camp, niece	25,000	1,250.00
Frances Ella Huntington, niece	25,000	1,250.00
Lorenzo Blackstone, grand-nephew	25,000	1,250.00
Morton F. Plant, nephew	10,000	500.00
William J. Bryson, stranger	15,000	750.00
Susan E. Jones, stranger	5,000	250.00
James Blackstone Memorial Library Association of Branford, Connecticut	100,000	5,000.00
Art Institute of Chicago	25,000	1,250.00
Chicago orphan asylum	25,000	1,250.00
Home of the Friendless, Chicago	25,000	1,250.00
St. Lake's hospital, Chicago	25,000	1,250.00
Passavant Memorial hospital, Chicago	25,000	1,250.00
Chicago Relief and Aid Society, Chicago	25,000	1,250.00
Isabella F. Blackstone, widow	3,753,609.58	37,536.00

ABNER C. THOMAS, *Surrogate.*

99 *Notice of Assessment of Tax and Proof of Service Thereof, Read on Behalf of Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Estate of TIMOTHY B. BLACKSTONE, Deceased.

You are hereby notified that I have, by order made the 20th day of February, 1901, assessed and fixed the cash value of such interest, estate, legacy or property as you are entitled to receive from or out of the estate left by said deceased, and the amount of the tax to which the same is liable under chapter 483 of the Laws of 1885 and the acts amendatory thereof and supplemental thereto, as follows:

100 To beneficiary.	Cash value of interest or estate thereof.	Tax assessed thereon.
Ellen B. Plant	$25,000.00	$1,250.00
William L. Harrison	30,000.00	1,500.00
Paul Harrison	30,000.00	1,500.00
Gertrude Harrison	20,000.00	1,000.00
George Blackstone	50,000.00	2,500.00
Adelaide Blackstone	20,000.00	1,000.00
Emma Pond	20,000.00	1,000.00
William N. Blackstone	250,000.00	12,500.00
Harriet B. Camp	25,000.00	1,250.00
Frances E. Huntington	25,000.00	1,250.00
Lorenzo Blackstone	25,000.00	1,250.00
Morton F. Plant	10,000.00	500.00
William J. Bryson	15,000.00	750.00
Susan E. Jones	5,000.00	250.00
James Blackstone Memorial Library Association of Branford, Conn	100,000.00	5,000.00
Art Institute of Chicago, Ill	25,000.00	1,250.00
Chicago orphan asylum	25,000.00	1,250.00
Home of the Friendless, Chicago	25,000.00	1,250.00
St. Luke's hospital, Chicago	25,000.00	1,250.00
Passavant Memorial hospital, Chicago	25,000.00	1,250.00
Chicago Relief & Aid Society, Chicago, Ill	25,000.00	1,250.00
Isabella F. Blackstone	3,753,609.58	37,536.09

ABNER C. THOMAS, *Surrogate.*

101 COUNTY OF NEW YORK, *ss:*

Alexander J. Shields, being duly sworn, says that he is a clerk in the office of the surrogate of the county of New York, and is of the age of 21 years *of age* and upward. That on the 23d day of February, 1901, he served notices, of each of which the within is a copy, upon the persons and bodies hereinafter named, by mailing one of such notices to each of such persons and bodies at the place of residence and address of such person or body stated below. That such notice was securely enclosed in a postpaid wrapper or envelope directed to such person or body at the aforesaid place of residence and address of such person or body, and such wrapper or envelope containing such notice was deposited by deponent on said 23d day of February, 1901, in the post-office in the city of New York.

James Blackstone Memorial Library Ass'n, Branford, Conn.
Chicago orphan asylum, Chicago, Ill.
Art Institute of Chicago, Chicago, Ill.
Chicago Relief & Aid Society, Chicago, Ill.
Passavant Memorial hospital, Chicago, Ill.
St. Luke's hospital, Chicago, Ill.
Home of the Friendless, Chicago, Ill.
Isabella F. Blackstone, 252 Michigan Ave., Chicago, Ill.

Gertrude Harrison, c/o Wm. Brown, Esq., Jacksonville, Ill.
Harriet B. Camp, c/o Wm. Brown, Esq., Jacksonville, Ill.
William N. Blackstone, c/o Wm. Brown, Esq., Jacksonville, Ill.
Adelaide Blackstone, c/o Wm. Brown, Esq., Jacksonville, Ill.
Emma Pond, c/o Wm. Brown, Esq., Jacksonville, Ill.
Lorenzo Blackstone, c/o Wm. Brown, Esq., Jacksonville, Ill.
102 Frances E. Huntington, c/o Wm. Brown, Esq., Jacksonville, Ill.
William J. Bryson, c/o Wm. Brown, Esq., Jacksonville, Ill.
Susan E. Jones, c/o Wm. Brown, Esq., Jacksonville, Ill.
Ellen B. Plant, c/o Wm. Brown, Esq., Jacksonville, Ill.
Morton F. Plant, c/o Wm. Brown, Esq., Jacksonville, Ill.
William L. Harrison, c/o Wm. Brown, Esq., Jacksonville, Ill.
George Blackstone, c/o Wm. Brown, Esq., Jacksonville, Ill.
Paul Harrison, c/o Wm. Brown, Esq., Jacksonville, Ill.
Hon. Erastus C. Knight, Albany, N. Y.
Hon. Bird S. Coler, 280 B'way, N. Y. city.

ALEX. J. SHIELDS.

Sworn to before me this 23d day of February, 1901.

JOHN KEENAN,
Assistant to the Surrogate, New York County.

103 *Notice of Appeal of Executrix, Read on Behalf of Appellant.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Notice of Appeal.

SIRS: Please take notice that Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, late of the city of Chicago, Illinois, deceased, hereby appeals to the surrogates of the county of New York, from each and every part of the appraisement, assessment and determination of tax herein, and from each and every part of the report of Charles B. Page, appraiser herein, filed in the office of the said surrogates on the 19th day of February, 1901, and of the order entered herein in said office on the 20th day of February, 1901, purporting to assess and fix a tax under article ten of chapter 908 of the Laws of 1896, of the State of New York, and the various acts amendatory thereof and supplemental thereto, upon the transfer of the property of the decedent above named.

The grounds upon which this appeal is taken are as follows:

First. That at the time of his death, Timothy B. Blackstone, the decedent above named, was not a resident of the
104 State of New York, and left no property in said State.

Second. That the will of said decedent by which the transfer attempted to be taxed in this proceeding was made, was duly proved before the probate court of Cook county in the State of Illinois,

where said decedent resided at the time of his death; that letters testamentary thereon were duly issued by said court to this appellant, and that no proceedings for the probate of said will or the administration of said decedent's estate have been taken in the State of New York.

Third. That the appellant herein and all the other legatees named in said order were at the time of said decedent's death and are residents and citizens of the United States, but non-residents of the State of New York.

Fourth. That if the debts due said decedent at the time of his death from the United States Trust Company of New York and the firm of Cuyler, Morgan & Company of the city of New York, which constitute the only property appraised herein, can be deemed for any purpose property then situated within the State of New York, that such property was only transitorily within said State.

Fifth. That a tax upon the transfer of and succession to all of the property of said decedent upon his death, including said debts so due him from said trust company and firm, has been duly assessed by the county court of Cook county in the State of Illinois, to which jurisdiction in that behalf belonged, and paid by this appellant to the treasurer of said Cook county.

Sixth. That this court has no jurisdiction in the premises, and that this proceeding and said appraisement, assessment, determination report and order are void.

105 Seventh. That the transfer tax law of the State of New York was not intended to and did not in fact include in its operation any debts owing to the decedent at the time of his death by said trust company or firm.

Eighth. That if said law had such intention or effect, said law was to that extent, and each and every part of said appraisement, assessment, determination, report and order was unconstitutional and void for the following reasons:

1. That they impair the obligation of the contracts made by said decedent with said trust company and firm, respectively, and so violate section 10 of article I of the Constitution of the United States.

2. That they deny full faith and credit in the State of New York to the public acts, records and judicial proceedings of the State of Illinois, and so violate section 1 of article IV of said Constitution.

3. That they deprive citizens of Illinois and Connecticut of certain privileges and immunities of citizens of the State of New York and so violate section 2 of article IV of said Constitution.

4. That they abridge the privileges and immunities of this appellant and the other legatees under the will of said decedent, and would deprive this appellant and said other legatees of their property without due process of law, and deny to them the equal protection of the law and so violate article XIV of amendment to said Constitution.

5. That they would deprive this appellant and said other legatees of their property without due process of law, and so violate section 6 of article I of the constitution of the State of New York.

106 Ninth. That said report and order erroneously fix the value of the property of said decedent passing by his will at $4,553,609.58, without deducting the sum of $64,625.56 which was paid by this appellant to the county treasurer of Cook county, Illinois, on the 26th day of November, 1900, as the inheritance tax levied and assessed upon the right of succession of the legatees under said will to all the property of the decedent, including the amounts owed him at the time of his death by said trust company and firm; and also without deducting the sum of $21,095 paid by this appellant as the Federal legacy tax assessed upon the $800,000 of general legacies given by said will.

Dated February 25th, 1901.

Yours, &c., EDWARD W. SHELDON,
Attorney for Isabella F. Blackstone, Individually and as Executrix, &c., of Timothy B. Blackstone, Deceased, Appellant.

To J. Fairfax McLaughlin, Esq., clerk of the surrogate's court, county of New York; Julius Offenbach, Esq., attorney for the comptroller of the city of New York.

107 *Order Reversing Order Assessing Tax, Read on Behalf of Respondent (Order Appealed from).*

At a surrogate's court held in and for the county of New York, at the county court-house in the county of New York, on the 26th day of July, 1901.

Present: The Honorable Frank T. Fitzgerald, surrogate.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

The comptroller of the city of New York having heretofore filed his petition herein, dated November 10, 1900, for the appointment of some competent person to appraise the property passing by the will of Timothy B. Blackstone, the decedent above named, or such part thereof as might be subject to taxation under the laws of the State of New York in relation to taxable transfers of property, and an order having on November 12, 1900, been entered, directing Charles B. Page to fix the fair market value at the time of the transfer of the property which was of the above-named decedent and which was subject to the payment of any tax imposed by article X of chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto; and the said appraiser having on

108 February 19, 1901, filed his report herein; and an order having thereupon been entered herein February 20, 1901, declaring that the cash value of the property passing by the will of said decedent to the legatees thereunder was as follows, viz: Ellen B. Plant, niece, $25,000; William L. Harrison, grand-nephew, $30,000; Paul Harrison, grand-nephew, $30,000; Gertrude Harrison, grand-niece, $20,000; George Blackstone, nephew, $50,000; Adelaide Black-

stone, niece, $20,000; Emma Pond, niece, $20,000; William N. Blackstone, nephew, $250,000; Harriet B. Camp, niece, $25,000; Frances Ella Huntington, niece, $25,000; Lorenzo Blackstone, grandnephew, $25,000; Morton F. Plant, nephew, $10,000; William J. Bryson, stranger, $15,000; Susan E. Jones, stranger, $5,000; James Blackstone Memorial Library Association of Branford, Connecticut, $100,000; Art Institute of Chicago, $25,000; Chicago orphan asylum, $25,000; Home of the Friendless, Chicago, $25,000; St. Luke's hospital, Chicago, $25,000; Passavant Memorial hospital, Chicago, $25,000; Chicago Relief and Aid Society, Chicago, $25,000, and Isabella F. Blackstone, widow, $3,753,609.58, and that the tax to which said legacies were liable on such transfer was at the rate of five per cent. of such value upon the legacies to said collateral relatives and strangers, and one per cent. upon the legacy to said widow; and said Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, having appealed to the surrogates of the county of New York from said order of February 20, 1901; now upon reading and filing the petition for the appointment of said appraiser, the oath of said appraiser, the notice of appraisal, the notice of appearance and protest of said Isabella F. Blackstone, the report of said appraiser, the testimony taken before said appraiser, the answer of said Isabella F. Blackstone, individually and as executrix of the last will and testament of Tim-
109 othy B. Blackstone, deceased, to said petition, with the exhibits annexed to said answer, the affidavit of Henry L. Thornell, verified January 10th, 1901, the affidavits of William J. Bryson and Albert Wick, verified January 9th, 1901, the notice of entry of order assessing tax, and the order assessing tax, and the notice of appeal therefrom, and after hearing Edward W. Sheldon, Esq., of counsel for Isabella F. Blackstone, individually and as executrix of Timothy B. Blackstone, deceased, and Julius Offenbach, Esq., of counsel for the comptroller of the city of New York, respondent; now on motion of Edward W. Sheldon, attorney for Isabella F. Blackstone, individually and as executrix, &c., of Timothy B. Blackstone, deceased, it is

Ordered that the order entered herein February 20, 1901, be and the same hereby is reversed, and said transfers are, and each of them is hereby, declared to be exempt from any transfer tax under the laws of the State of New York.

FRANK T. FITZGERALD, *Surrogate.*

110 *Notice of Appeal, Read on Behalf of Respondent.*

Surrogate's Court, County of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COMPTROLLER OF THE CITY OF NEW YORK, Appellant,

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Respondent.

Please take notice that the comptroller of the city of New York hereby appeals to the appellate division of the supreme court of the State of New York, first department, from the order entered herein in the office of the clerk of this court, on the 26th day of July, 1901, and from each and every part thereof.

Dated New York, August 12th, 1901.

Yours, &c.,

JULIUS OFFENBACH,
Attorney for Comptroller of the City of New York.

Office and post-office address, 27–29 Pine street, borough of Manhattan, city of New York.

111 To James Fairfax McLaughlin, Esq., clerk of surrogate's court, county of New York, and Edward W. Sheldon, Esq., attorney for Isabella F. Blackstone, individually and as executrix, &c.

STATE OF NEW YORK, } ss.:
County of New York, }

I, J. Fairfax McLaughlin, clerk of the surrogate's court of said county, do hereby certify that I have compared the foregoing copy of the notice of appeal, papers, order and decree in the matter of the appraisal under the act in relation to taxable transfers of property of the property of Timothy B. Blackstone, deceased, with the originals thereof in this office, and have found the same are true and correct copies of such originals, and the same with the originals thereof are all the papers upon which said order and decree are made.

In testimony whereof, I have hereunto set my hand and affixed the seal of the surrogate's court of the county of New York, this 24th day of September, in the year of our Lord, one thousand nine hundred and one.

[SEAL.] J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

Surrogate's Court.

By FITZGERALD, S.:

Estate of Timothy B. Blackstone.—The decedent a non-resident, died in May, 1900, leaving nearly $5,000,000 with the United States Trust Company and over $10,000 due him on an account with a firm of bankers in this city. The deposit with the trust company arose under the following circumstances: The decedent had been for many years the president and a large stockholder in an Illinois railroad company. In March, 1899, an agreement was entered into for the purchase of this stock by a syndicate which sought to obtain a controlling interest in the railroad. In pursuance of this agreement the decedent joined with other stockholders in a sale of his shares. The trust company was made the depositary of the stock to be purchased, and was authorized upon receiving the certificates, duly indorsed, to pay the agreed price therefore. Decedent communicated with the trust company, inquiring whether, in case he sold, he might leave the proceeds with it; that he was at a loss to know how safely to invest these proceeds, and might wish to deposit a considerable sum for several months. The trust company replied that it would receive such proceeds, hold them subject to his order and allow interests thereon at a specified rate, but if he would require more than $100,000 he should not draw upon the trust company except upon two days' notice. These terms were acceded to, and on the 29th day of March, 1899, his stock certificates were delivered to the trust company, who made a book transfer of the purchase price from its account with the purchasing syndicate to a new account in decedent's name, entitled "Deposits in trust." No certificate of deposit nor pass book was issued, and the only evidence of the deposit was this book entry and the
113 correspondence stated. Up to the time of his death the decedent had withdrawn about $200,000. The appellant alleges that it was decedent's fixed intention to leave this balance with the trust company only temporar-y and pending its investment; that owing to his ill health, which was continuous and progressive from the date of the deposit until his death, he was unable to carry out his intention. On several occasions he expressed disappointment at his failure and complained that he was suffering great pecuniary loss in consequence. In the Estate of Leopold (Law Journal, June 28, 1901) I had occasion to pass upon the taxability of a deposit made under somewhat similar circumstances, and I there held that where a decedent had deposited three days prior to his death a sum of money to the credit of a syndicate formed for the purchase of stock, which purchase was completed within a month succeeding his death, the property was only transitorily here and was not liable to taxation under the transfer tax law. In the present case while the property remained here for more than a year, the proof shows that the money realized upon the sale of the securities was of great

magnitude; that the reason why it was not removed from the State sooner was because of the difficulties experienced in making new investments and the ill health of the owner. I can see no difference in principal between the two cases, and upon the authority of that case and of the cases cited in the memorandum handed down in that case I sustain the appeal.

114 *Order of Reversal, Read on Behalf of Respondent.*

At a stated term of the appellate division of the supreme court, first department, held at the appellate division court-house, in the county of New York, on the 7th day of February, 1902.

Present: Hon. Charles H. Van Brunt, P. J.; Hon. Morgan J. O'Brien, Hon. George L. Ingraham, Hon. Edward W. Hatch, JJ.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Respondent.

An appeal having been duly taken to the appellate division of the supreme court, first department, in the name of the comp-
115 troller of the city of New York, from the order of the surrogate's court of the county of New York entered herein and filed in the office of the clerk of the said surrogate's court on the 26th day of July, 1901, which reversed the order of said surrogate's court entered in the office of the clerk thereof on the 20th day of February, 1901, on the report of Charles B. Page, appraiser herein, and declared transfers of the property of the decedent above named exempt from any transfer tax under the laws of the State of New York, and said appeal duly coming on to be heard,

And after hearing Thomas Penney, of counsel for the comptroller of the city of New York, in support of said appeal, and Edward W. Sheldon, of counsel for respondent in opposition thereto, and due deliberation having been had,

On motion of Julius Offenbach, attorney for appellant, it is

Ordered, that the order of the surrogate's court of the county of New York appealed from, be, and the same hereby is reversed, with ten dollars costs and disbursements to the appellant, and the order of said surrogate's court entered in the office of the clerk thereof on the 20th day of February, 1901, be, and the same hereby is affirmed.

116 Appellate Division of the Supreme Court, State of New York, First Judicial Department, Clerk's Office, New York County.

In the Matter of the Appraisal, &c., of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COMPTROLLER OF THE CITY OF NEW YORK, App'l't;

ISABELLA F. BLACKSTONE, Indiv'y & as Executrix, &c., of Timothy B. Blackstone, Dec'd, Resp't.

I, Alfred Wagstaff, clerk of the appellate division of the supreme court, in the first judicial department, do hereby certify that the foregoing is a copy of the order made by said court upon the appeal in the above-entitled action or proceeding, and entered in my office on the first day of March 1902, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at the city of New York this 4th day of March, 1902.

[L. S.] ALFRED WAGSTAFF, *Clerk.*

117 *Order of Surrogate's Court on Remittitur, Read on Behalf of Respondent.*

At a term of the surrogate's court of the county of New York, held in the county court-house in the borough of Manhattan, city of New York, on the 12th day of March, 1902.

Present: Hon. Abner C. Thomas, surrogate.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Respondent.

This proceeding having been brought on upon a remittitur herein sent down from the appellate division of the supreme court of the State of New York, first department, and filed with the clerk of this court on the 6th day of March, 1902, by which remittitur it appears
118 that an appeal was taken by Bird S. Coler, comptroller of the city of New York, to the appellate division of the supreme court, first department, from the order of the surrogate's court *in made* this proceeding and entered in the office of the clerk of the county of New York on the 26th day of July, 1901; that on such appeal the said order of the surrogate's court appealed from was reversed with ten dollars costs and disbursements, and that the record and proceedings had been directed by said appellate division of the supreme court of the State of New York, first department, to be re-

mitted to this court for its further proceedings thereon according to law; and the appellant's costs having been duly taxed by consent at the sum of eighty-eight and $\frac{15}{100}$ dollars; now therefore,

On motion of Julius Offenbach, attorney for Bird S. Coler, comptroller of the city of New York, it is

Ordered, that the said order of the appellate division of the supreme court of the State of New York first department, be, and the same hereby is, made the order of this court; that the order of surrogate's court of the county of New York appealed from be, and the same hereby is, reversed, with eighty-eight and $\frac{15}{100}$ dollars costs to the appellant, to be paid by the respondent; and that the order of this court herein entered in the office of the clerk hereof on the 20th day of February, 1901, be and the same hereby is, affirmed.

ABNER C. THOMAS, *Surrogate.*

119 *Notice of Appeal to Court of Appeals, Read on Behalf of Appellant.*

Surrogate's Court, New York County.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Please take notice that Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, late of the city of Chicago, Illinois, deceased, hereby appeals to the court of appeals of the State of New York from the order herein of the appellate division of the supreme court of said State for the first judicial department, entered in the office of the clerk of said appellate division on the 1st day of March, 1902, which, upon the appeal of the comptroller of the city of New York, reversed an order herein of the surrogate's court for the county of New York, entered in the office of the clerk of said surrogate's court on the 26th day of July, 1901, and affirmed an order herein of the said surrogate's court, entered in the office of the clerk of said court on the 20th day of February, 1901, and from each and every part of said order of March 1st, 1902, and that on said appeal the appellant intends to bring up for review the order herein of the said appellate division, entered in the office of the clerk of said appellate division on the 13th day of December, denying the motion

120 of said Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, to dismiss the appeal herein taken by the comptroller of the city of New York from said surrogate's court order of July 26th, 1901, and also to bring up for review the order herein of said appellate division entered in the office of the clerk of said appellate division on the 29th day of January, 1902, denying the motion of said Isabella F. Blackstone individually and as executrix as aforesaid

for leave to appeal to the court of appeals from said order of December 13th, 1901.

Dated March 26th, 1902.

Yours, &c.,

EDWARD W. SHELDON,
Attorney for Appellant, 45 *Wall Street*,
Manhattan, New York.

To Thomas L. Hamilton, Esq., clerk of the county of New York. J. Fairfax McLaughlin, Esq., clerk of the surrogate's court, New York county. Julius Offenbach, Esq., attorney for the comptroller of the city of New York.

To the comptroller of the State of New York.

121 STATE OF NEW YORK, } ss:
County of New York, }

I, J. Fairfax McLaughlin, clerk of the surrogate's court of said county, do hereby certify that I have compared the foregoing copies of the notice of appeal, papers and orders in the matter of the appraisal under the act in relation to taxable transfers of property of the property of Timothy B. Blackstone deceased, and of the remititur of the appellate division therein with the originals thereof in this office, and have found the same are true and correct copies of such originals and the same with the originals thereof are all the papers upon which said order and decree was made.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of the surrogate's court of the county of New York, this 22nd day of April in the year of our Lord one thousand nine hundred and two.

(S'g'd) J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

122 *Opinion of Appellate Division, Read on Behalf of Respondent.*

Supreme Court, Appellate Division, First Department, January, 1902.

Charles H. Van Brunt, P. J.; Morgan J. O'Brien, George L. Ingraham, Edward W. Hatch, JJ.

In the Matter of the Appraisal of the Property, under the Act of Taxable Transfers of Property, — of TIMOTHY B. BLACKSTONE, Deceased. No. 3792.

THE COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix, &c., Respondent.

Appeal from an order of the surrogate of New York county, declaring the transfer of certain property of the decedent exempt from taxation.

Mr. Thomas Penny, for appellant.
Mr. Edward W. Sheldon, for respondent.

HATCH, *J.:*

123 Timothy B. Blackstone, whose estate is sought to be taxed under the transfer tax law in this proceeding, was a resident of the city of Chicago in the State of Illinois, and died in said city on the 26th day of May, 1900, leaving a last will and testament. For thirty-four years prior to March, 1899, he had been the president of the Chicago and Alton Railroad Company, a corporation formed under the laws of the State of Illinois. On the 29th day of March, 1899, the decedent, having concluded to sell his holdings of stock in said corporation, forwarded the same to the United States Trust Company, a corporation organized under the laws of the State of New York; 26,537 shares of said stock were sold, pursuant to an agreement entered into before the delivery of the stock to the trust company, which sale produced a large sum of money; $4,881,522.21 of the proceeds of such sale was by arrangement with the trust company placed in its hands and credited to the deceased; the agreement with the trust company in reference thereto being, that the trust company should hold the same subject to the order of the decedent, pay interest thereon at the rate of two and one-half per cent. per annum, and repay the principal upon demand, provided, however, that notice of not less than two days should be given to said trust company before any portion of such money exceeding in amount the sum of $100,000 should be demanded. On the date of the death of the decedent there was due to him from the trust company of such moneys, principal and interest, $4,843,456.72. There was also due to the decedent from Cuyler, Morgan & Co., bankers of the city of New York, $10,692.24,

being the balance of a deposit account kept with said firm. The will of the deceased was duly admitted to probate in Cook county, in the State of Illinois. By its terms he made various specific bequests, in the sum of $800,000, to collateral relatives and to persons not related to the testator, and also to certain benevolent, charitable and educational institutions located without the State of New York. The residue of his estate he gave to his widow Isabella F. Blackstone.

On the 10th day of November, 1900, an application was
124 duly made by the comptroller of the city of New York, upon a petition duly verified, setting forth the jurisdictional facts as required by the transfer tax law, to the surrogate of the county of New York for the designation of an appraiser to fix the market value of the property of the deceased within this jurisdiction which was subject to the payment of the tax under the transfer tax law of this State. The surrogate acted thereon and appointed an appraiser, as required by the act, and such proceedings were thereafter had as resulted in a determination by the appraiser that the two sums of money deposited with the United States Trust Company and with Cuyler, Morgan & Co., amounting in the aggregate to $4,553,609.58, were subject to the payment of the tax as prescribed by the act. From the determination of the appraiser an appeal was taken by the executor of the estate to the surrogate, who reversed the determination of the appraiser, holding that the said sums of money were not subject to any transfer tax under the laws of the State of New York, but were exempt therefrom. An appeal from the order of the surrogate brings the matter into this court.

Every question presented by this appeal has been settled by decisive authority. The facts as presented in Matter of Houdayer (150 N. Y., 37), involve, in principle, every question presented by the facts in this case, and arose under substantially the same circumstances. The deposits were held to be money for all practical purposes, owned by the decedent at the time of his death, and as such taxable under the transfer tax act of the State. Other authorities support this view (Matter of the Estate of Romaine, 127 N. Y., 80; Matter of Whiting, 150 N. Y., 27; Matter of Bronson, 150 N. Y., 1).

It is urged that the comptroller is without authority to prosecute this appeal. Such question was settled adversely to the contention of the respondent upon the motion to dismiss the appeal in this case, where it was held that as the comptroller of the city of New York was authorized to institute the proceeding, he had authority
125 to prosecute the appeal from the decision of the surrogate, although the powers and duties in respect thereto had devolved upon the comptroller of the State. Such condition would authorize a substitution of the comptroller of the State, but until such substitution is had the proceeding was properly prosecuted by the officer instituting it.

These are the only questions presented upon this appeal. It follows, therefore, that the order of the surrogate should be reversed

and the report of the appraiser confirmed, with $10 costs and disbursements to the appellant.

All concur.

126 Court of Appeals.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Appellant;

COMPTROLLER OF THE CITY OF NEW YORK, Respondent.

Papers on Motions to Dismiss Appeal and for Leave to Appeal to the Court of Appeals.

Edward W. Sheldon, attorney for appellant, No. 45 Wall street, Manhattan, New York.

Julius Offenbach, Esq., attorney for respondent.

127 *Notice of Motion to Dismiss Appeal, Read on Behalf of Appellant.*

Appellate Division, Supreme Court, First Department.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COMPTROLLER OF THE CITY OF NEW YORK, Appellant.

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Respondent.

SIR: Please take notice that upon the printed papers on appeal herein, filed in the office of the clerk of this court, copies of which are hereto annexed, and on the annexed affidavit of Edward W. Sheldon, verified November 7, 1901. I shall move the court, at a term thereof, to be held in its court-house on Madison square,

128 New York, on Friday, the 15th day of November, 1901, at 1 o'clock in the afternoon, or as soon thereafter as counsel can be heard, to dismiss the appeal taken herein by the comptroller of the city of New York, from the order of the surrogate's court for the county of New York, entered in the above-entitled proceeding on the 26th day of July, 1901, upon the ground that said comptroller of the city of New York is not a party interested in said order and is not aggrieved thereby.

Dated November 7, 1901.

Yours, etc., EDWARD W. SHELDON,

Attorney for Isabella F. Blackstone, Individually and as Executrix, etc., Respondent, 45 Wall Street, Manhattan, New York.

To Julius Offenbach, Esq., attorney for the comptroller of the city of New York, appellant.

129 *Affidavit of Edward W. Sheldon on Motion to Dismiss Appeal, Read on Behalf of Appellant.*

Appellate Division, Supreme Court, First Department.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Respondent.

COUNTY OF NEW YORK, *ss:*

Edward W. Sheldon, being duly sworn, says that he is the attorney in this proceeding for the respondent Isabella F. Blackstone, individually and as executrix, etc., of Timothy B. Blackstone, deceased, and that, as deponent is informed and believes, the appellant The Comptroller of the City of New York is not a party
130 interested in the order appealed from herein which was entered in the above-entitled proceeding in the surrogate's court for New York county on the 26th day of July, 1901, and is not aggrieved thereby. No appeal from said order has been taken by any other person or party.

EDWARD W. SHELDON.

Sworn to before me this 7th day of November, 1901.

DANIEL MOYNAHAN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

131 *Affidavit of Theodore P. Gilman in Opposition to Motion to Dismiss Appeal, Read on Behalf of Respondent.*

Appellate Division of the Supreme Court, First Department.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Respondent.

COUNTY OF ALBANY, *ss:*

Theodore P. Gilman, being duly sworn, says that he is the deputy comptroller of the State of New York.

That in the month of October, 1900, deponent was the comptroller

of said State, and that on October 10, 1900, deponent as such comptroller designated Julius Offenbach as attorney for the comptroller of the city of New York to institute and conduct on behalf of
132 the People of the State of New York, but in the name of said city comptroller proceedings to appraise, fix and assess the transfer tax due upon the transfer of the property of the above-named decedent, situated in this State at the time of his death. That said proceedings and the appeal now pending have ever since been and now are being conducted on behalf of the People of the State of New York, in the name of said official and by said attorney with the assent and by the direction of the comptroller of the State of New York.

That within the past week deponent has caused a careful search to be made in the office of said State comptroller, and as the result thereof, states to the best of his knowledge and belief that no notice of appeal has ever been served upon the State comptroller, from the order of the New York surrogate's court herein, entered February 20th, 1901, fixing the value and assessing the tax upon the transfer of said property of the said decedent.

THEO. P. GILMAN.

Sworn to before me this 4th day of December, 1901.

WILLIS E. MERRIMAN,
Notary Public.

133 *Affidavit of Julius Offenbach in Opposition to Motion to Dismiss Appeal, Read on Behalf of Respondent.*

Appellate Division of the Supreme Court, First Department.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased, Respondent.

COUNTY OF NEW YORK, *ss:*

Julius Offenbach, being duly sworn, says that he is an attorney-at-law and the attorney for the comptroller of the city of New York herein, having been designated to act as such on the 10th day of October, 1900, by the comptroller of the State of New York. That deponent duly instituted these proceedings and appeared for
134 said comptroller of the city of New York before the appraiser in the above-entitled matter, pursuant to notice served upon deponent, and was, on the 19th day of December, 1900, served with notice of appearance on behalf of Isabella F. Blackstone, addressed to deponent as attorney for said city comptroller, together with affidavits filed on behalf of said executrix with said appraiser.

Deponent had frequent conferences with the attorney for said executrix from said date, in relation to said appraisal, and on the 25th day of February, 1901, deponent received a notice of appeal by said executrix, addressed to deponent as attorney for said comptroller, and admitted service thereof on behalf of said comptroller at the request of the attorney for said executrix.

That the said appeal, after several adjournments, finally came on for argument before the surrogate's court of New York county on the 26th day of March, 1901, and that deponent appeared and argued said appeal as attorney and counsel for said city comptroller.

On the 24th day of July, 1901, deponent received from the attorney for said executrix a proposed order and notice of settlement thereof, and on the 30th day of July, 1901, a copy of said order and notice and entry thereof, said papers being addressed to deponent as attorney for said city comptroller, said order appears at page 107 of the printed papers on appeal herein.

That on the 13th day of August, 1901, deponent as said attorney, as aforesaid, duly filed a notice of appeal from said order with the clerk of the surrogate's court of New York county and served same on the attorney for said executrix, who admitted service thereof, and has ever since retained same without objection.

On the 28th day of August, 1901, deponent, as such attorney as aforesaid, requested and obtained from the attorney for said
135 executrix, an extension of time to file and serve the printed papers on appeal herein, and on the 17th day of September, 1901, obtained a further and similar extension.

That on the 25th day of September, 1901, deponent caused three copies of the printed papers on appeal herein to be served on said attorney for the executrix, who duly admitted service thereof, and has ever since retained same without objection.

That on the 4th day of October, 1901, deponent received notice of argument of said appeal served on behalf of said executrix and addressed to deponent, as attorney for said city comptroller, and on the 9th day of October, 1901, deponent served notice of argument of said appeal upon the attorney for said executrix, who admitted service thereof, and has ever since retained same without objection.

That said notice of argument and all papers hereinbefore referred to as having been served by deponent, on the attorney for said executrix, were signed and endorsed by deponent in terms as attorney for the comptroller of the city of New York, and that deponent has taken the usual steps to bring said appeal on for argument before the appellate division of the supreme court, first department, on behalf of said city comptroller.

That the foregoing acts of deponent were done by him under his original retainer as aforesaid, by the comptroller of the State of New York, on behalf of the comptroller of the city of New York, which retainer has never been revoked, but remains in full force and effect. That no other person or officer has ever appeared or been cited or taken part in this proceeding on behalf of the State, except the comptroller of the city of New York and deponent as his attorney, as aforesaid.

That no objection was at any time interposed by or on behalf of said executrix to the appearance of the comptroller of the city of New York in this proceeding, until the service of notice of motion to dismiss this appeal on the 7th of November, 1901, after the
136 argument of said appeal had been adjourned from October 15th to November 8th, 1901, by stipulation signed by said attorney for said executrix, and requested and signed by deponent as attorney for said city comptroller as aforesaid.

JULIUS OFFENBACH.

Sworn to before me this 14th day of November, 1901.

THEODORE LONG,
Commissioner of Deeds, N. Y. City.

137 *Order Denying Motion to Dismiss Appeal, Read on Behalf of Respondent.*

At a term of the appellate division of the supreme court, first department, held at the appellate division court-house, in the county of New York, on the 13th day of December, 1901.

Present: Hon. Charles H. Van Brunt, P. J., Hon. Edward Patterson, Hon. Morgan J. O'Brien, Hon. Chester B. McLaughlin, Hon. Frank C. Laughlin, JJ.

In the Matter of the Appraisal, under an Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

ISABELLA F. BLACKSTONE, Individually and as Executrix, &c., Respondent;

BIRD S. COLER, Comptroller of the City of New York, Appellant.

The respondent above named having moved to dismiss the appeal of the comptroller of the city of New York from the final order of the surrogate's court of the county of New York, entered herein on the 26th day of July, 1901, upon the ground that said comp-
138 troller is not a party interested in said order and is not aggrieved thereby, and said motion having duly come on to be heard,

Now, on reading and filing the notice of said motion, dated November 7, 1901, and proof of service thereof, the affidavit of Edward W. Sheldon, verified the said day, the affidavits of Theodore P. Gilman, verified December 4th, 1901, and of Julius Offenbach, verified November 14th, 1901, and the printed papers on appeal herein, and

After hearing Edward W. Sheldon, Esq., of counsel for the respondent, in support of said motion, and Julius Offenbach, Esq., of counsel for the appellant, in opposition thereto, and due deliberation having been had, it is,

On motion of Julius Offenbach, attorney for the comptroller of the city of New York,

Ordered, that said motion be, and the same hereby is, denied, with ten dollars costs to the appellant.

Ent.

C. H. V. B.

139 *Notice of Motion for Leave to Appeal to the Court of Appeals, Read on Behalf of Appellant.*

Supreme Court, Appellate Division, First Department.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

THE COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix, &c., of Timothy B. Blackstone, Deceased, Respondent.

SIR: Please take notice that, upon the printed papers on appeal herein, filed in the office of the clerk of this court, upon the notice of motion made by Isabella F. Blackstone, individually and as executrix, &c., respondent herein, for a dismissal of the above-entitled appeal, upon the affidavits filed upon said motion, upon the order of this court filed herein on the 18th day of December, 1901, denying said motion, with costs, and upon the annexed affidavit of Edward W. Sheldon, verified January 2d, 1902, I shall move the court at a term thereof to be held in its court-house on Madison square, New York, on Friday, the 10th day of January, 1902, at one o'clock in the afternoon, or as soon thereafter as counsel can be

140 heard, that the said Isabella F. Blackstone, individually, and as executrix, &c., of Timothy B. Blackstone, deceased, have leave to appeal to the court of appeals of the State of New York from said order of the appellate division of December 18, 1901, and that said appellate division certify that a question of law has arisen as to whether the comptroller of the city of New York is entitled to appeal to said appellate division from the order of the surrogate's court for New York county, entered July 26, 1901, and that in the opinion of said appellate division such question of law ought to be reviewed by the court of appeals.

Dated January 2, 1901.

Yours, &c.,

EDWARD W. SHELDON,
Attorney for Isabella F. Blackstone, Individually and as Executrix, &c.

To Julius Offenbach, Esq., attorney for the comptroller of the city of New York.

141 *Affidavit of Edward W. Sheldon on Motion for Leave to Appeal to the Court of Appeals, Read on Behalf of Appellant.*

Supreme Court, Appellate Division, First Department.

In the Matter of the Appraisal, under the act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

THE COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix, &c., of Timothy B. Blackstone, Deceased, Respondent.

COUNTY OF NEW YORK, *ss.:*

Edward W. Sheldon, being duly sworn, says that he is the attorney in this proceeding for the respondent Isabella F. Blackstone, individually and as executrix, &c., of Timothy B. Blackstone, deceased; that this proceeding is an appeal taken by the comptroller of the city of New York, August 13, 1901, and perfected September 25, 1901, from an order of the surrogate's court for the county of New York, entered July 26, 1901, which declared the property of Timothy B. Blackstone, a resident of the State of Illinois, exempt from a

142 transfer tax under the laws of the State of New York; that on November 7, 1901, a motion was made on behalf of the respondent to dismiss said appeal on the ground that said comptroller was not a party interested in said order, and was not aggrieved thereby; that on the application of said comptroller the argument of said motion was adjourned from November 15th to December 6, 1901; that it was duly argued and submitted to this court on December 6, 1901; that on December 13, 1901, the court handed down a decision denying said motion, and that on December 18, 1901, an order was duly entered by this court in accordance with such decision, and denying respondent's motion to dismiss the appeal with $10 costs; that the appeal from said surrogate's court order of July 26, 1901, is now set down for argument in this court January 10, 1902; that the respondent desires to appeal from said order of December 18, 1901, to the court of appeals of the State of New York, and further desires that this court will certify to said court of appeals for determination the question as to whether the comptroller of the city of New York is entitled, notwithstanding the passage of chapter 173 of the laws of 1901, to appeal to this court from said order of the surrogate's court entered July 26, 1901.

That deponent believes that the question of law involved in said motion to dismiss is important; that its determination will affect other similar proceedings, and is of public interest, and that, in order to protect fully the interests of the respondent herein, it is necessary that such question be reviewed by the court of appeals.

EDWARD W. SHELDON.

Sworn to before me this 2d day of January, 1902.
DANIEL MOYNAHAN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

143 *Order Denying Motion for Leave to Appeal to the Court of Appeals, Read on Behalf of Respondent.*

At a stated term of the appellate division of the supreme court of the State of New York, first department, held at the court-house, in the county of New York, on the 24th day of January, 1902.

Present: Hon. Charles H. Van Brunt, presiding justice. Hon. Edward Patterson, Hon. Morgan J. O'Brien, Hon. Frank C. Laughlin, JJ.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

THE COMPTROLLER OF THE CITY OF NEW YORK, Appellant;

ISABELLA F. BLACKSTONE, Individually and as Executrix, &c., of Timothy B. Blackstone, Deceased, Respondent.

A motion having been made herein by the respondent for leave to appeal to the court of appeals of the State of New York from the order entered herein on the 18th day of December, 1901, by the appellate division of the supreme court of the State of New
144 York, first department, denying the respondent's motion to dismiss the appeal taken by the appellant herein, and that said appellate division certify that a question of law has arisen as to whether the comptroller of the city of New York is entitled to appeal to said appellate division from the order of the surrogate's court for New York county, entered July 26th, 1901, and that, in the opinion of said appellate division, such question of law ought to be reviewed by the court of appeals; and said motion duly coming on to be heard;

Now, on reading the printed papers on appeal herein, filed in the office of the clerk of this court, the affidavit of Edward W. Sheldon verified the 2d day of January, 1902, and the notice of said motion herein, dated the same day, and after hearing Edward W. Sheldon, Esq., of counsel for respondent, in support of said motion, and Julius Offenbach, of counsel for the comptrollers of the city and State of New York, in opposition thereto, and due deliberation having been had,

On motion of Julius Offenbach, attorney for the said comptrollers, it is

Ordered, that said motion be, and the same hereby is denied.

(A copy.)

ALFRED WAGSTAFF,
Clerk Appellate Division, Supreme Court,
First Department.

(Endorsed:) Filed Jan. 29, 1902. Alfred Wagstaff, clerk, appellate division, supreme court, first department.

[SEAL.]

145 Appellate Division of the Supreme Court, State of New York, First Judicial Department, Clerk's Office, New York County.

In the Matter of the Appraisal, &c., of the Property of TIMOTHY B. BLACKSTONE, Deceased.

ISABELLA F. BLACKSTONE, Individually and as Executrix, &c., of Timothy B. Blackstone, Deceased, Appellant;

COMPTROLLER OF THE CITY OF NEW YORK, Respondent.

I, Alfred Wagstaff, clerk of the appellate division of the supreme court in the first judicial department, do hereby certify that the foregoing are copies of the affidavits and notices of motions to dismiss the appeal herein, and for leave to appeal to the court of appeals, together with the orders made by said court in the above-entitled action or proceeding and duly entered in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at the city of New York this 28th day of April, 1902.

[SEAL.] (S'g'd) ALFRED WAGSTAFF, *Clerk.*

146 *Opinion of Appellate Division on Motion to Dismiss Appeal, Read on Behalf of Respondent.*

Supreme Court, Appellate Division, First Department.

In the Matter of the Transfer Tax upon the Estate of TIMOTHY B. BLACKSTONE, Deceased.

Memorandum.

Per curiam:

This motion should be denied. The comptroller of the city of New York having properly instituted these proceedings they must necessarily be conducted in his name, (notwithstanding that his powers and duties in relation thereto have devolved by law upon the comptroller of the State of New York,) until substitution of parties has been made.

Motion denied with costs.

December 13, 1901.

147 STATE OF NEW YORK, *ss.*:

Court of Appeals.

Pleas in the court of appeals held at the capitol, in the city of Albany, on the 24th day of June, in the year of our Lord one thousand nine hundred and two, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, June 25th, 1902.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Be it remembered, that on the 2nd day of May, in the year of our Lord one thousand nine hundred and two, Isabella F. Blackstone, individually and as executrix, &c., of Timothy B. Blackstone, deceased, the appellant in this proceeding, came here into the court of appeals, by Edward W. Sheldon, her attorney, and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the first judicial department. And Comptroller of the City of New York, the respondent in said proceeding afterward appeared in said court of appeals by Julius Offenbach, his attorney.

Which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

148 Whereupon, the said court of appeals having heard this proceeding argued by Mr. Edward W. Sheldon, of counsel for the appellant, and by Mr. Julius Offenbach, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the appellate division of the supreme court appealed from herein, be, and the same hereby is affirmed, with costs. Motions to dismiss appeal and to correct the record denied, with costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the surrogate's court of New York county, there to be proce-ded upon according to law.

Wherefore, it is considered that said order be, and the same hereby is, affirmed with costs, etc., etc., as aforesaid.

And hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises are by the said court of appeals remitted into the surrogate's court of New York county, before the surrogates thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said surrogate's court of etc., before the surrogates thereof, etc.,

W. H. SHANKLAND,

Clerk of the Court of Appeals of the State of New York.

149 Court of appeals, clerk's office, Albany, June 25th, 1902.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said proceeding in the court of appeals, with the papers originally filed therein attached thereto.

[SEAL.] W. H. SHANKLAND, *Clerk.*

150 [Endorsed:] Court of appeals. In the matter of the appraisal under the act in relation to taxable transfers of property of the property of Timothy B. Blackstone, deceased. Remittitur. Edward W. Sheldon, attorney for appellant, 45 Wall street, borough of Manhattan, city of New York.

151 At a stated term of the surrogate's court held in and for the county of New York, at the county court-house in the borough of Manhattan, city of New York, on the 30th day of June, 1902.

Present: Hon. Abner C. Thomas, surrogate.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, having duly appealed to the court of appeals from the order herein of the appellate division of the supreme court for the first judicial department, entered in the office of the clerk of said court on the first day of March, 1902, which reversed the order herein of the surrogate's court of the county of New York, entered in the office of the clerk of said surrogate's court on the 26th day of July, 1901, and affirmed the order herein of said surrogate's court entered in the office of the clerk thereof on the 20th day of February, 1901, and the court of appeals having sent down the record of said appeal and the proceedings in said court to the surrogate's court of New York county, here to be proceeded upon according to law, whereby it appears

152 that upon said appeal the court of appeals ordered that said order of the appellate division of the supreme court, first department herein appealed from should be affirmed with costs of said appeal to the respondent, The Comptroller of the City of New York,

Now, on reading and filing the remittitur of the court of appeals herein, and the costs of the respondent on said appeal having been duly taxed at the sum of $139.68, *dollars*, and on motion of Julius Offenbach, attorney for the comptrollers of the State and city of New York, it is

Ordered, that said order of the court of appeals be, and the same hereby is made the order of this court, and that the order herein of the appellate division of the supreme court, first department, appealed from as aforesaid, be, and the same hereby is, affirmed, with one hundred and thirty-nine 68/100 dollars costs of said appeal, to the comptroller of the city of New York.

ABNER C. THOMAS, *Surrogate.*

Please take notice that the order of which the within is a copy, was, on the 30th day of June, 1902, duly entered and filed in the within-entitled action, in the office of the clerk of the court within named.

Dated, New York city, July 7th, 1902.

JULIUS OFFENBACH,
Attorney for Comptrollers of the State and City of New York, 27 Pine Str., New York City.

153 [Endorsed:] Surrogate's court, In the matter of the transfer tax upon the estate of Timothy B. Blackstone, deceased. Order and notice of entry. Julius Offenbach, attorney for State & city comptroller, 27–29 Pine street, New York city.

154 Surrogate's Court, County and State of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Petition for Writ of Error.

Comes now Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, late of the city of Chicago, in the State of Illinois, deceased, by her attorney, and complains that in the record and proceedings had in the above-entitled cause in the court of appeals of the State of New York, which is the highest court of law and equity in said State in which a decision could be had, and which has remitted the record and proceedings in said court to the surrogate's court for the county and State of New York, there to be proceeded upon according to law, and also in the rendition of the judgment or decree in the above-entitled cause in said surrogate's court for the county of New York on the 30th day of June, 1902, wherein was drawn in question the validity of a statute of said State and of an authority exercised
155 thereunder on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, manifest error hath happened to the great damage of the said Isabella F. Blackstone, individually and as executrix as aforesaid.

Wherefore the said Isabella F. Blackstone, both individually and as such executrix prays for the reversal of said judgment or decree, and for the allowance of a writ of error, and for such other orders and process as may cause such error to be corrected by the Supreme Court of the United States.

Dated this 31st day of July 1902.

ISABELLA F. BLACKSTONE,
Individually and as Executrix, &c., of Timothy B. Blackstone, Deceased,
By EDWARD W. SHELDON, *Her Attorney.*

Allowed Aug. 4, 1902.
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

156 [Endorsed:] Allowance. Surrogate's court. County and State of New York. In the matter of the appraisal under the act in relation to taxable transfers of property of the property of Timothy B. Blackstone, deceased. Petition for writ of error. Edward W. Sheldon, attorney for Isabella F. Blackstone, individ. &c., 45 Wall street, borough of Manhattan, city of New York.

157 Surrogate's Court, County and State of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Assignment of Errors.

Comes now Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, by Edward W. Sheldon, her attorney, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First. That the property which was the subject of taxation in the above-entitled cause was situated in the State of Illinois, where Timothy B. Blackstone, the above-named decedent, resided at the time of his death, and where the said Isabella F. Blackstone, his wife, has ever since resided; that none of said property was situated in the State of New York at the time of said decedent's death, and that accordingly the tax laws of the State of New York have no application thereto, and the courts of the State of New York have no jurisdiction to assess a tax upon said property or upon the transfer or inheritance thereof or the succession thereto.

158 Second. That if the debts due said decedent at the time of his death from the United States Trust Company of New York, and the firm of Cuyler, Morgan & Company of the city of New York, which constitute the only property taxed herein, could be deemed for any purpose property then situated within the State of New York, that such property was only transitorily within said State, and that the courts of that State had no jurisdiction under section 8 or 10 of article I of the Constitution of the United States, or otherwise, to assess a tax thereon.

Third. That the statute of the State of New York relating to taxable transfers of property as applied to the facts and circumstances of this case, and the authority exercised under said statute, as interpreted by the decision and judgment herein, are unconstitutional and void on the ground that they are repugnant to section 10 of article I of the Constitution of the United States, in that said statute and authority impair the obligation of contracts between said Timothy B. Blackstone and the United States Trust Company of New York and Cuyler, Morgan and Company of New York.

Fourth. That said statute of the State of New York, as interpreted by said decision and judgment, and the authority exercised under said statute, are unconstitutional and void on the ground that they are repugnant to section 1 of article IV of the Constitution of the United

States, in that said statute and authority deny full faith and credit in the State of New York to the public acts, records and judicial proceedings of the State of Illinois under which the inher-
159 itance, succession or transfer tax upon the property which was the subject of this cause had been duly assessed, levied and paid.

Fifth. That said statute of the State of New York as interpreted by said decision and judgment, is unconstitutional and void on the ground that it is repugnant to section 2 of article IV of the Constitution of the United States, in that said statute deprives the plaintiff in error and other citizens of Illinois as well as citizens of other States of certain privileges and immunities of citizens of the State of New York.

Sixth. That said statute of the State of New York as interpreted by said decision and judgment, is unconstitutional and void on the ground that it is repugnant to section 1 of article XIV of the Constitution of the United States, in that the said statute abridges the privileges and immunities of the plaintiff in error, and of other citizens of the United States, deprives said citizens of their property without due process of law, and denies to said citizens the equal protection of the laws.

Seventh. That the court should have dismissed the proceeding to impose a transfer tax upon the property in question.

Wherefore the said Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, as aforesaid, prays that the judgment and decision herein of the court of appeals of the State of New York, and the judgment or decree rendered by the surrogate's court of the county
160 and State of New York on the remittitur of said court of appeals of the State of New York, be reversed, and that said proceeding be dismissed.

Dated July 31, 1902.

EDWARD W. SHELDON,

Attorney for Isabella F. Blackstone, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased.

161 [Endorsed:] Surrogate's court, county and State of New York. In the matter of the appraisal under the act in relation to taxable transfers of property of the property of Timothy B. Blackstone, deceased. Assignment of errors. Edward W. Sheldon, attorney for Isabella F. Blackstone, individ. &c., 45 Wall street, borough of Manhattan, city of New York.

162 Surrogate's Court, County and State of New York.

In the Matter of the Appraisal, under the Act in Relation to Taxable Transfers of Property, of the Property of TIMOTHY B. BLACKSTONE, Deceased.

Bond.

Know all men by these presents that we, Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, as principal, and the American Surety Company, as surety, are held and firmly bound unto Nathan L. Miller, comptroller of the State of New York, and Edward M. Grout, comptroller of the city of New York, or their successors, in the sum of one thousand dollars, for the payment of which well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals. Dated the 31st day of July, one thousand nine hundred and two.

Whereas, the above-named Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B.
163 Blackstone, deceased, has sued out a writ of error to the Supreme Court of the United States to review the record and proceedings of the court of appeals of the State of New York in the above-entitled cause, and to reverse the judgment or decree of the surrogate's court of the county of New York entered in said cause on the 30th day of June, 1902.

Now, therefore, the condition of the above obligation is such that if the above-bounded Isabella F. Blackstone shall prosecute said writ of error to effect and shall answer all damages and costs, if she shall fail to make good her plea, then the above obligation shall be void, otherwise to remain in full force and virtue.

ISABELLA F. BLACKSTONE,
Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, Deceased,
By EDWARD W. SHELDON, *Her Attorney.*
AMERICAN SURETY COMPANY OF NEW YORK,
[L. S.] By DAVID B. SICKELS, *Vice-President.*
CORTLANDT S. VAN RENSSELAER, *Attorney.*

164 STATE AND COUNTY OF NEW YORK, *ss:*

On this 1st day of August, 1902, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and

that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said David B. Sickels, further said that he was acquainted with Cortlandt S. Van Rensselaer, and knew him to be one of the attorneys of said corporation, that the signature of said Cortlandt S. Van Rensselaer, subscribed to the said instrument, is in the genuine handwriting of the said Cortlandt S. Van Rensselaer, and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said David B. Sickels, vice-president.

WM. H. BISHOP,
[L. S.] *Notary Public, New York County.*

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"*Resolved*, That the president and vice-presidents be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, Cortlandt S. Van Rensselaer, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at the city of New York, this 1st day of August, 1902.

[L. S.] CORTLANDT S. VAN RENSSELAER, *Attorney.*

165 [Endorsed:] Surrogate's court, county and State of New York. In the matter of the appraisal under the act in relation to taxable transfers of property of the property of Timothy B. Blackstone, deceased. Bond. Edward W. Sheldon, attorney for Isabella F. Blackstone, individ. &c. 45 Wall street, borough of Manhattan, city of New York.

The within bond is hereby approved as to form, amount, and sufficiency of surety.

Dated August 4, 1902.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

166 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the surrogates of the county of New York, State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said surrogate's court in and for the county of New York, State of New York, before you or one of you, having been remitted to you by the court of appeals of said State, being the highest court of law or equity of the said State in which a decision could be had in the said suit entitled In the matter of the appraisal under the act in relation to taxable transfers of property, of the property of Timothy B. Blackstone, deceased, wherein was drawn in question the validity of a treaty, or statute, of, or an authority exercised under, the United States and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution of, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege or exemption, specially set up or claimed under such clause of the said Constitution, treaty,
167 statute or commission, a manifest error hath happened, to the great damage of Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court, at Washington within 30 days from the date hereof, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the 6th day of Aug. in the year of our Lord one thousand nine hundred and two.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York.

Allowed by
R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

Aug. 4, 1902.

168 [Endorsed:] Writ of error.

169 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Nathan L. Miller, comptroller of the State of New York, and Edward M. Grout, comptroller of the city of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the surrogate's court in and for the county of New York wherein Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 4th day of August in the year of our Lord one thousand nine hundred and two.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

170 STATE OF NEW YORK, }
County of New York, } *ss:*

Malcolm V. Ryan being duly sworn, says that he is a clerk in the office of Edward W. Sheldon, the attorney for the plaintiff in error herein, and that he is over twenty-one years of age; that he served the annexed citation upon Nathan L. Miller, comptroller of the State of New York, by handing a copy thereof to Willis C. Merriman, second deputy and acting comptroller of the State of New York, and leaving it with him. That the said service was made on Thursday August 7th, 1902, between the hours of 12 m. and 1 p. m. at the offices of the comptroller of the State of New York, at the State Department building on Eagle street, in the city of Albany, State of New York. That deponent was there informed that the said Nathan L. Miller was absent from the said city and that the said Willis C. Merriman was acting as comptroller of the State of New York.

MALCOLM V. RYAN.

Sworn to before me this 8th day of August, 1902.

DANIEL MOYNAHAN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

171 STATE OF NEW YORK, } ss.:
County of New York, }

Albert Wick being duly sworn, says that he is a clerk in the office of Edward W. Sheldon, the attorney for the plaintiff in error herein and that he is over twenty one years of age; that he served the annexed citation upon Edward M. Grout, comptroller of the city of New York, by handing a copy thereof to James W. Stevenson, deputy and acting comptroller of the city of New York, and leaving it with him. That the said service was made on Wednesday August 6, 1902, between the hours of 12 m. and 1 p. m. at the offices of the comptroller of the city of New York; at number 280 Broadway, borough of Manhattan, city of New York. That deponent was there informed that the said Edward M. Grout was absent from the said city and that the said James W. Stevenson was then acting as comptroller of the city of New York. That as deponent is further informed and believes the said Edward M. Grout sailed from the city of New York for Europe on the 26th day of July, 1902, for an absence of several weeks and is not now within the United States.

ALBERT WICK.

Sworn to before me this 6th day of August, 1902.

DANIEL MOYNAHAN,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

172 & 173 [Endorsed:] Citation.

Due service of the within citation is admitted this 7th day of August, 1902.

JULIUS OFFENBACH,
Att'y for State Comptroller and City Comptroller.

174 STATE OF NEW YORK, ss.:

Court of appeals, State reporter's office.

I, Edwin A. Bedell, reporter of the court of appeals of the State of New York, do hereby certify that I have compared the following copy of the decision handed down by the court of appeals June 24, 1902, In the matter of the appraisal under the act in relation to taxable transfers of property of the property of Timothy B. Blackstone, deceased, with the original on file in this office, and that such copy is a correct transcript of said decision handed down by the court of appeals in the said matter, to wit:

"Order affirmed, with costs, on the ground that this case is controlled by the matter of Houdayer (150 N. Y., 37). Motions to dismiss appeal and to correct record denied, without costs. No opinion.

Concur, Parker, Ch. J., Gray, Haight, Vann, Cullen and Werner, JJ. Dissenting, O'Brien, J."

Seal Court of Appeals, State of New York.

In witness whereof I have hereunto set my hand and affixed the seal of the court of appeals at the city of Albany, this 30th day of July, A. D. 1902.

EDWIN A. BEDELL,
State Reporter,

Per C.

175 All which we have caused by these presents to be exemplified, and the seal of our said surrogate's court to be hereunto affixed.

Witness, Hon. Abner C. Thomas, a surrogate of the county of New York, at the city of New York, the thirteenth day of August, in the year of our Lord one thousand nine hundred and two, and of our Independence the one hundred and twenty-seventh.

[New York Surrogate's Seal.]

J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

I, Abner C. Thomas, a surrogate of said county, and presiding magistrate of the surrogate's court, do hereby certify that J. Fairfax McLaughlin, whose name is subscribed to the preceding exemplification, is the clerk of said surrogate's court of the county of New York, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said surrogate's court, and that the attestation thereof is in due form, and according to the form of attestation used in this State.

Dated New York, August 13th, 1902.

ABNER C. THOMAS, *Surrogate.*

STATE OF NEW YORK, }
County of New York, } *ss:*

I, J. Fairfax McLaughlin, clerk of the surrogate's court of the county of New York, do hereby certify that Hon. Abner C. Thomas, whose name is subscribed to the preceding certificate, is the presiding magistrate of the surrogate's court of the county of New York, duly elected, sworn and qualified, and that the signature of said magistrate to said certificate is genuine.

In witness whereof, I have hereto set my hand and affixed the seal of the said court, this 13th day of August 1902.

[New York Surrogate's Seal.]

J. FAIRFAX McLAUGHLIN,
Clerk of the Surrogate's Court.

176 [Endorsed:] Surrogate's court, county of New York. In the matter of the estate of Timothy Blackstone, deceased. (Exemplified copy.) Filed —— of ——, 190–.

Endorsed on cover: File No. 18,651. New York, New York county surrogate's court. Term No. 423. Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, plaintiff in error, *vs.* Nathan L. Miller, comptroller of the State of New York, and Edward M. Grout, comptroller of the city of New York. Filed August 19, 1902.

No. 423.

Office Supreme Court U.S.
FILED
NOV 10 1902
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

Motion to advance.

ISABELLA F. BLACKSTONE, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased,
Plaintiff in Error.

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York,
Defendant in Error.

Nov. 10, 1902.

October Term, 1902.
No. 423.

Writ of Error to the Surrogates' Court of the County of New York.

MOTION TO ADVANCE.

And now comes the plaintiff in error and moves this Honorable Court to advance this cause upon the docket, and to hear it at as early a day as the convenience of the Court will permit. The reasons for this application are as follows:

This case presents questions of general public interest and of great importance, and their prompt and authoritative decision is important not only to the State of New York and to the plaintiff in error, but to the various States in the Union which have enacted succession, inheritance or transfer taxes, and to the citizens of said States. The matter involved is the liability of the plaintiff in error, a citizen and resident of the State of Illinois, and the residuary legatee and sole executrix of her husband, Timothy B. Blackstone, who died May 26, 1900, a citizen and resident of said State, to pay $77,536.09 which has been assessed against her as an

inheritance or transfer tax by the State of New York upon $4,854,127.96 of indebtedness due to said Timothy B. Blackstone at the time of his death from a trust company and a firm of private bankers in the City of New York.

In opposition to this assessment the plaintiff in error claims:

1. That these debts were intangible and were in no sense property within the State of New York within the meaning of the New York Tax Law or the principles of general jurisprudence;
2. That if such indebtedness was property within that State, it was only transitorily there, and would not be subject to taxation;
3. That an inheritance tax had already been assessed upon and collected on this indebtedness by the State of Illinois; and
4. That the imposition of any further tax by the State of New York would be in violation of the Constitution of the United States.

The Surrogates' Court of the County of New York, where the matter originated, determined, after consideration of the case, that the indebtedness in question was not subject to a tax, and entered an order declaring its exemption (35 Miscellaneous Rep. N. Y., 585). The representative of the State appealed from this order to the Appellate Division of the Supreme Court, where the order of the Surrogates' Court was reversed upon the ground that the Court of Appeals of New York had already decided these questions adversely to the plaintiff in error in the case of the Matter of Houdayer, 150 N. Y., 39 (69 App. Div., 127). The plaintiff in error then appealed from the decision of the Appellate Division of the Supreme Court to the Court of Appeals, where the opinion of the Appellate Division was affirmed on the authority of the Houdayer case, O'Brien, J., dissenting (171 N. Y., 682). The plaintiff in error has sued out this writ.

The decision of the Court of Appeals in the Matter of Houdayer, *supra*, was sought to be reviewed in this court, but the writ of error was dismissed because of the failure of the plaintiff in error to raise the constitutional questions in the courts below (Scudder v. Coler, 175 U. S. 32).

The questions above-named have never been finally determined in any court of the United States, and until they are determined by this Court will be a constant source of embarrassment to the owners of property and to the financial administration of various States in the Union. In the State of New York alone property to the amount of millions of dollars will, it is believed, be affected by the determination of this case.

In Orr v. Gilman, 183 U. S., 278, which was argued at the last term of this Court, and which involved another phase of the New York transfer tax law, the Court granted a motion to advance the cause, and in the opinion of counsel, the reasons for a similar disposition of this cause are even more cogent.

Under these circumstances counsel respectfully suggests that the questions of constitutional law involved in this case should be determined in all their aspects as speedily as the convenience of this Honorable Court will permit.

Dated October 20th, 1902.

Respectfully submitted,

Edward W. Sheldon

Counsel for Plaintiff in Error.

I hereby waive notice of the foregoing motion to advance, and join in the application therefor.

Counsel for Defendant in Error.

33261

Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

October Term, 1902.
No. 423.

Writ of Error to the Surrogate's Court of the County of New York.

NOTICE OF MOTION TO ADVANCE.

SIR:

PLEASE TAKE NOTICE that the annexed motion to advance this cause will be brought on for hearing before the Justices of this Honorable Court, at a term thereof, to be held at the Capitol in the City of Washington, on the 10th day of November, 1902, at twelve o'clock, noon.

Dated November 3rd, 1902.

Yours, &c.,

Edwards W Sheldon

Counsel for Plaintiff in Error.

To JULIUS OFFENBACH, ESQ.,
Solicitor and Counsel for Defendants in Error.

No. 423.

Office Supreme Court
FILED
NOV 10 1902
JAMES H. McKENNEY,
Clerk.
33262

Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually and as Executrix of the last will and testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York,
Defendant in Error.

October Term, 1902.
No. 423.

Opposition to the Motion to Advance.

Now comes the defendants in error and oppose the application made by the plaintiff in error to advance this case upon the docket. The grounds of such opposition are as follows: This appeal is not entitled to be advanced under section 949 of the Revised Statutes of the United States or Rule 26 of this Court. The State or its representatives (defendants in error) are not applying for the advancement of this cause on the grounds that it is to collect a revenue due to the State, but, on the contrary, are opposing such application. There are no peculiar features in this appeal which entitle it to a preference.

The opposition of the defendants in error is further based upon the ground that there is an application pending to require the plaintiff in error to increase his bond of $1,000 given as a supersedeas to a decree for the sum of $77,500, and accrued penalty thereon amounting to about the sum of $20,000, which application was before Mr. Justice Peckham this day, and which application the solicitor of the defendants in error was directed to present to this court in banc by the said justice on an order to show cause to be granted therefor by Mr. Justice Peckham, returnable on the 17th day of November next.

In order to protect the interests of the defendants in error and the State of New York it is important that the questions of the increase bond should be disposed of before this motion to advance is decided, as the decision of the motion to increase the bond may result in an abandonment of this appeal by the plaintiff in error, or failing to comply with an order of this court in a dismissal thereof.

Dated November 10, 1902.

Respectfully submitted,

JULIUS OFFENBACH,
Counsel for Defendants in Error.

33263

33264

Office Supreme Court U. S.
FILED
NOV 17 1902
JAMES H. McKENNEY,
Clerk.

No. 423.

Motion for a new bond.

Supreme Court of the United States.

Filed Nov. 17, 1902.

ISABELLA F. BLACKSTONE, individually and as Executrix of the last will and testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

October Term, 1902.

No. 423.

MOTION FOR A NEW BOND.

Now come the defendants in error and move the Court that the plaintiff in error be required to file a new bond.

JULIUS OFFENBACH,
Counsel for Defendants in Error.

33266

Office Supreme Court U.S.
FILED
NOV 15 1902
JAMES H. McKENNEY
Clerk

No. 423.

Order as to new Road &c.

Filed Nov. 15, 1902.

SUPREME COURT OF THE UNITED STATES.

ISABELLA F. BLACKSTONE, individually and as Executrix of the last Will and Testament of Timothy B. Blackstone, deceased,

Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,

Defendants in Error.

October Term, 1902.
No 423.

On the record herein, and on the annexed affidavit of Julius offenbach, verified on the 12th day of November, 1902, and all the proceedings had herein, and

On motion of Mr. Julius Offenbach, solicitor and of counsel for the defendants in error above named, it is

ORDERED, that the plaintiff in error appear before the Supreme Court at the Capitol in the City of Washington, District of Columbia, on the 17th day of November, 1902, at 12 o'clock noon on that day, and show cause why the plaintiff in error

should not be required to file a bond or other security herein in the sum of one hundred and twenty-five thousand dollars to secure damages and costs herein, or why, in default thereof, the approval of the bond heretofore filed herein by the plaintiff in error should not be withdrawn and cancelled, and all proceedings based upon said bond vacated, and why the defendants in error should not have such other and further relief in the premises as may be just; and it is further

ORDERED, that service hereof on the solicitor for the plaintiff in error on or before November 14th, 1902, shall be sufficient,

Dated at Washington, District of Columbia, November 13th, 1902.

R. W. PECKHAM,
Asso. Jus. Sup. Ct. U. S.

33267

SUPREME COURT OF THE UNITED STATES.

ISBELLA F. BLACKSTONE, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

STATE OF NEW YORK, *County of New York*, } ss.:

JULIUS OFFENBACH, being duly sworn, says: That he is solicitor for the defendants in error above named. This is a proceeding to appraise the property of Timothy B. Blackstone, deceased, the transfer of part of which was subject to tax under the Transfer Tax Laws of the State of New York (Chap. 908, L. 1896) and to fix and determine the amount of the tax thereon. The proceeding originated in the Surrogate's Court in and for the County of New York, in which Court an order was duly entered on the 20th day of February, 1901, determining the value of said property subject to tax by the State of New York at $4,553,609.58, and fixing the tax upon the several transfers thereof at the total sum of seventy-seven thousand

five hundred and thirty-six dollars. After sundry appeals, the Court of Appeals of the State of New York, on or about the 24th day of June, 1902, entered an order affirming the order of the Appellate Division of the Supreme Court of said State, which had affirmed said order of said Surrogate's Court; and to review said order of said Court of Appeals the plaintiff in error above named has sued out a writ of error to the Supreme Court of the United States Under the Tax Law of the State of New York in conformity with the provisions of which said proceeding has been conducted and said tax determined, a penalty of ten per cent. per annum is imposed for the non-payment of said tax from the 26th day of May, 1900, on which date the decedent whose estate is here involved died; and the full amount of said tax and penalty is at this date over ninety-six thousand five hundred dollars.

To collect said tax, the Tax Laws of the State of New York provide for a summary proceeding at the instance of the District Attorney for the County of New York, resulting in a judgment, which judgment is enforcible against any property belonging to the estate of decedent found within the State of New York. In connection with her writ of error herein, the plaintiff in error above named filed a bond in the sum of one thousand dollars only, in form to secure *damages and costs*, thus staying proceedings upon said order of the Court of Appeals, and acting as a *supersedeas* thereof. Said bond was fixed at said amount *ex parte*, and deponent believes that the same was fixed at so small an amount inadvertently, and without knowledge that the effect of said bond will be to stay proceedings to collect said tax and penalty thereon, as above set forth, which amount will be largely increased before this writ of error

can be heard by the Supreme Court of the United States. Deponent was informed by the solicitor for the plaintiff in error while this proceeding was pending in the Court of Appeals, that the property of said decedent, upon the transfer of which the aforesaid tax has been levied, had been removed since this proceeding was instituted, from the State of New York. In deponent's opinion it is indispensable for the protection of the rights of the State of New York, and of the defendants in error, speedily to prosecute proceedings to convert said order of the Court of Appeals into a judgment and to enforce and collect the same. In deponent's opinion the amount of said bond as filed by plaintiff in error is totally insufficient adequately to secure the amount involved in this proceeding and penalty thereon, which is not otherwise secured, and costs.

On October 30th, 1902, Mr. Justice Peckham, on deponent's application, granted an order requiring the plaintiff-in-error to show cause why he should not be required to file a bond or other security herein in he sum of $125,000, to secure damages and costs, or why in default thereof the approval of the bond heretofore filed herein by the plaintiff-in-error should not be withdrawn and canceled. On the return of said order, said application was not determined, but said Justice directed the same to be brought before the Supreme Court *in banc*, on an order to show cause.

WHEREFORE, the annexed order is prayed, for which no previous application has been made, except as aforesaid.

JULIUS OFFENBACH.

Subscribed and sworn to before me at the County of New York, this 12th day of November, Nineteen hundred and two.

HARRY MACK,
Notary Public,
[SEAL.] N. Y. County.

Office Supreme Court U. S.
FILED
NOV 17 1902
JAMES H. McKENNEY,
Clerk.

No. 423.

Affidavit &c.

Supreme Court of the United States.

Filed Nov. 17, 1902.

ISABELLA F. BLACKSTONE, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

against

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

OCTOBER TERM, 1902.

No. 423.

Affidavit and Return in opposition to Motion to Increase Penalty of Appeal Bond.

EDWARD W. SHELDON,
ROBERT WILKINSON,
Of Counsel for Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

33271

Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

October Term, 1902. No. 423.

Return on Behalf of Plaintiff in Error in Opposition to Motion to Increase Penalty of Appeal Bond.

Now comes the plaintiff in error pursuant to an order of the Honorable RUFUS W. PECKHAM, Associate Justice, dated November 13th, 1902, and for cause why the prayer of the defendants in error should not be granted and why the plaintiff in error should not be required to file a bond or other security herein in the sum of one hundred and twenty-five thousand dollars to secure damages and costs, or why, in default thereof, the approval of the bond heretofore filed herein should not be withdrawn and cancelled, and all proceedings based upon said bond vacated, respectfully shows to the Court :

I. The supersedeas bond for $1,000 approved August 4, 1902, and filed herein on August 15, 1902, is sufficient in amount and complies with the rules and practice of this Court.

Under Rule 29 of this Court "*Supersedeas* bonds in the circuit court must be taken, with good and sufficient surety, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including 'just damages for delay,' and costs and interest on the appeal."

"Every justice or judge signing a citation on any writ of error, shall, except in cases brought up by the United States or by direction of any department of the government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ to effect, and, if he fail to make his plea good, shall answer all damages and costs, where the writ is a supersedeas, or all costs only where it is not a supersedeas as aforesaid."

R. S., 2d Ed., Sec. 1000.

"Writs of error from the Supreme Court to a State Court in cases authorized by law, shall be issued in the same manner and under the same regulations, and shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States."

R. S., 2d Ed., Sec. 1003.

In the present case, the writ of error is issued to review the following order of the Surrogate's Court for the County of New York :

" At a Special Term of the Surrogates' Court held in and for the County of New York, at the County Court House in the Borough of Manhattan, City of New York, on the 30th day of June, 1902.

Present, HON. ABNER C. THOMAS, Surrogate.

IN THE MATTER

OF

the Appraisal under the Act in relation to Taxable Transfers of property, of the property of TIMOTHY B. BLACKSTONE, deceased.

ISABELLA F. BLACKSTONE, individually and as Executrix of the last will and testament of Timothy B. Blackstone, deceased, having duly appealed to the Court of Appeals from the order herein of the Appellate Division of the Supreme Court for the First Judicial Department, entered in the office of the Clerk of said Court on the first day of March, 1902, which reversed the order herein of the Surrogates' Court of the County of New York, entered in the office of the Clerk of said Surrogates' Court on the 26th day of July, 1901, and affirmed the order herein of said Surrogates' Court entered in the office of the Clerk thereof on the 20th day of February 1901, and the Court of Appeals having sent down the record of said Appeal and the proceedings in said Court to the Surrogates' Court of New York County, here to be proceeded upon according

to law, whereby it appears that upon said appeal the Court of Appeals ordered that said order of the Appellate Division of the Supreme Court, First Department herein appealed from should be affirmed with costs of said appeal to the respondent, the Comptroller of the City of New York.

Now, on reading and filing the remittitur of the Court of Appeals herein, and the costs of the respondent on said appeal having been duly taxed at the sum of $139.68 dollars, and on motion of Julius Offenbach, attorney for the Comptrollers of the State and City of New York, it is

Ordered, that said order of this Court of Appeals be, and the same hereby is, made the order of this Court, and that the order herein of the Appellate Division of the Supreme Court, First Department, appealed from as aforesaid, be, and the same hereby is, affirmed, with One hundred and thirty-nine 68/100 Dollars costs of said appeal, to the Comptroller of the City of New York."

ABNER C. THOMAS,
Surrogate.

The order of the Appellate Division, which was thus affirmed, read as follows :

"At a Stated Term of the Appellate Division of the Supreme Court, First Department, held at the Appellate Division Court House, in the County of New York, on the 7th day of February, 1902.

Present :

HON. CHARLES H. VAN BRUNT, P. J.
HON. MORGAN J. O'BRIEN,
HON. GEORGE L. INGRAHAM,
HON. EDWARD W. HATCH,
} JJ.

In the Matter

of

The Appraisal under the Act in Relation to Taxable Transfers of Property, of the property of Timothy B. Blackstone, deceased,

Comptroller of the City of New York,

Appellant,

Isabella F. Blackstone, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,

Respondent.

An appeal having been duly taken to the Appellate Division of the Supreme Court, First Department, in the name of the Comptroller of the City of New York, from the order of the Surrogate's Court of the County of New York entered herein and filed in the Office of the Clerk of the said Surrogate's Court on the 26th day of July, 1901, which reversed the order of said Surrogate's Court entered in the office of the Clerk thereof on the 20th day of February, 1901, on the report of Charles B. Page, appraiser herein, and declared transfers of the property of the decedent above named exempt from any transfer tax under the laws of the State of New York, and said appeal duly coming on to be heard,

And after hearing Thomas Penney, of counsel for the Comptroller of the City of New York, in support of said appeal, and Edward W. Sheldon,

of counsel for respondent in opposition thereto, and due deliberation having been had,

On motion of Julius Offenbach, attorney for appellant, it is

Ordered, that the order of the Surrogate's Court of the County of New York appealed from, be, and the same hereby is reversed, with ten dollars costs and disbursements to the appellant, and the order of said Surrogate's Court entered in the office of the Clerk thereof on the 20th day of February, 1901, be, and the same hereby is, affirmed."

The order of the Surrogate's Court thus reversed was in this form:—

"At a Surrogate's Court held in and for the County of New York, at the County Court House in the County of New York, on the 26th day of July, 1901.

Present—The HONORABLE FRANK T. FITZGERALD, Surrogate.

IN THE MATTER

OF

The Appraisal under the Act in relation to Taxable Transfers of Property, of the property of TIMOTHY B. BLACKSTONE, deceased.

The Comptroller of the City of New York having heretofore filed his petition herein, dated November 10, 1900, for the appointment of some competent person to appraise the property passing

by the will of Timothy B. Blackstone, the decedent above named, or such part thereof as might be subject to taxation under the laws of the State of New York in relation to taxable transfers of property, and an order having on November 12, 1900, been entered, directing Charles B. Page to fix the fair market value at the time of the transfer of the property which was of the above-named decedent and which was subject to the payment of any tax imposed by Article X of Chapter 908 of the Laws of 1896, and the acts amendatory thereof and supplemental thereto; and the said appraiser having on February 19, 1901, filed his report herein; and an order having thereupon been entered herein February 20, 1901, declaring that the cash value of the property passing by the will of said decedent to the legatees thereunder was as follows, viz: Ellen B. Plant, niece, $25,000; William L. Harrison, grandnephew, $30,000; Paul Harrison, grandnephew, $30,000; Gertrude Harrison, grandniece, $20,000; George Blackstone, nephew, $50,000; Adelaide Blackstone, niece, $20,000; Emma Pond, niece, $20,000; William N. Blackstone, nephew, $250,000; Harriet B. Camp, niece, $25,000; Frances Ella Huntington, niece, $25,000; Lorenzo Blackstone, grandnephew, $25,000; Morton F. Plant, nephew, $10,000; William J. Bryson, stranger, $15,000; Susan E. Jones, stranger, $5,000; James Blackstone Memorial Library Association of Branford, Connecticut, $100,000; Art Institute of Chicago, $25,000; Chicago Orphan Asylum, $25,000; Home of the Friendless, Chicago, $25,000; St. Luke's Hospital, Chicago, $25,000; Passavant Memorial Hospital, Chicago, $25,000; Chicago Relief and Aid Society, Chicago, $25,000; and Isabella F. Blackstone, widow, $3,753,609.58, and that the tax to which said legacies were liable on such transfer was at the rate of five per cent. of such value upon the legacies to said collateral relatives and strangers, and one per cent. upon the legacy to said widow; and said Isabella F. Black-

stone, individually and as executrix of the last will and testament of Timothy B. Blackstone, having appealed to the Surrogates of the County of New York from said order of February 20, 1901; now upon reading and filing the petition for the appointment of said appraiser, the oath of said appraiser, the notice of appraisal, the notice of appearance and protest of said Isabella F. Blackstone, the report of said appraiser, the testimony taken before said appraiser, the answer of said Isabella F. Blackstone, individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, to said petition, with the exhibits annexed to said answer, the affidavit of Henry L. Thornell, verified January 10th, 1901, the affidavits of William J. Bryson and Albert Wick, verified January 9th, 1901, the notice of entry of order assessing tax, and the order assessing tax, and the notice of appeal therefrom, and after hearing Edward W. Sheldon, Esq., of counsel for Isabella F. Blackstone, individually and as executrix of Timothy B. Blackstone, deceased, and Julius Offenbach, Esq., of counsel for the Comptroller of the City of New York, respondent; now on motion of Edward W. Sheldon, attorney for Isabella F. Blackstone, individually and as executrix, &c., of Timothy B. Blackstone, deceased, it is

"Ordered that the order entered herein February 20, 1901, be and the same hereby is reversed, and said transfers are, and each of them is hereby, declared to be exempt from any transfer tax under the laws of the State of New York."

This Surrogate's order of February 20, 1901, had been entered as of course upon the appraiser's report, and read as follows:

"At a Surrogate's Court, held in and for the County of New York, at the County Court House, in the County of New York, on the 20th day of February, 1901.

Present—The Honorable Abner C. Thomas,
Surrogate.

In the Matter

of

The Appraisal Under the Act in Relation to taxable Transfers of Property, of the property of Timothy B. Blackstone, deceased.

Upon reading and filing the report of Charles B. Page, the Appraiser herein, dated the 19th day of February, 1901, it is

Ordered, that the cash value at the date of decedent's death of the property, the transfer of which is liable to taxation in this proceeding, and the tax to which the same is liable, are as follows:

Name of Beneficiary.	Cash Value.	Tax.
Ellen B. Plant, niece	$25,000	$1,250.00
William L. Harrison, grandnephew	30,000	1,500.00
Paul Harrison, grandnephew	30,000	1,500.00
Gertrude Harrison, grandniece	20,000	1,000.00
George Blackstone, nephew	50,000	2,500.00
Adelaide Blackstone, niece	20,000	1,000.00
Emma Pond, niece	20,000	1,000.00
William N. Blackstone, nephew	250,000	12,500.00
Harriet B. Camp, niece	25,000	1,250.00

Name of Beneficiary.	Cash Value.	Tax.
Frances Ella Huntington, niece	25,000	1,250.00
Lorenzo Blackstone, grandnephew	25,000	1,250.00
Morton F. Plant, nephew	10,000	500.00
William J. Bryson, stranger	15,000	750.00
Susan E. Jones, stranger	5,000	250.00
James Blackstone Memorial Library Association of Branford, Connecticut	100,000	5,000.00
Art Institute of Chicago	25,000	1,250.00
Chicago Orphan Asylum	25 000	1,250.00
Home of the Friendless, Chicago	25,000	1,250.00
St. Luke's Hospital, Chicago	25,000	1.250.00
Passavant Memorial Hospital, Chicago	25,000	1,250.00
Chicago Relief and Aid Society, Chicago	25,000	1,250.00
Isabella F. Blackstone, widow	3,753,609.58	37,536.00 "

It thus appears that the only amount recovered by the judgment or decree to be reviewed herein is $139.68. The Surrogate's first order of February 20, 1901, is not a judgment for money. It finally determines the amount of property passing under the will of the decedent and the amount of tax to which such property is subject, but it does not determine by whom such tax is to be paid, and upon it no execution can issue. The order would be in precisely the same form if all the taxes were directed by the will to be paid by the residuary legatee. Before any personal liability for the payment of these taxes can be imposed a separate proceeding by the District Attorney of New York

County is required under the following provisions of the New York Transfer Tax Law:

"SEC. 235. Proceedings for the collection of taxes. If the county treasurer or state comptroller shall have reason to believe that any tax is due and unpaid in a county in which he is authorized to receive the tax under this article, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why tax should not be paid. The surrogate, upon such an application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citation out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney, county treasurer, or the comptroller of the state, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree

after the collection and payment of the tax to the county treasurer or state comptroller may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state treasurer shall pay or allow to the county treasurer or the state comptroller all expenses incurred for the service of citations and other lawful disbursements not otherwise paid. In proceedings to which any county treasurer or the state comptroller is cited as a party under sections two hundred and thirty and two hundred and thirty-one of this article, the state comptroller is authorized to designate and retain counsel to represent such county treasurer or state comptroller therein, and to direct such county treasurer in a county in which the office of appraiser is not salaried to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax, and in any other county the state comptroller shall pay such expenses out of any funds which may be in his hands on account of this tax; provided, however, that in the collection of taxes upon estates of non-resident decedents, which estates have been concealed or the taxes thereon evaded, the state comptroller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected. And the comptroller of the state is hereby authorized, with the approval of the attorney-general and a justice of the supreme court of the judicial district in which the former owner resided, to compromise and set-

tle the amount of such tax in any case where controversies have arisen or may hereafter arise as to the relationship of the beneficiaries to the former owner thereof."

Before any money judgment can be entered it will thus be seen that an independent proceeding must be instituted, a citation issued to and served upon all the parties interested, an opportunity to interpose defences given, a hearing had in court and a decree entered. In their moving affidavit herein the defendants in error speak of this separate proceeding as converting the order appealed from into a judgment. They thus admit that the order is not now a judgment. Until such decree has been obtained the persons liable to pay the taxes are not determinable.

That the foregoing views are in accordance with the practice of this Court will, we think, be shown by the nature of the security required by this Court in recent similar tax cases :

(*a*) Scudder v. Comptroller, 175 U. S., 321 (1898).

Error to the Surrogates Court of the County of New York to review a judgment on remittitur affirming an order fixing a transfer tax of more than $2,000, with costs.

Supersedeas bond, $500.

(*b*) New York State v. Barker, 179 U. S., 279 (1900).

Error to review a decree dismissing writ of *certiorari* to review a personal tax assessment of more than $5,000.

Supersedeas bond, $500.

(*c*) Magoun v. Illinois Trust and Savings Bank, 170 U. S., 283 (1897).

Appeal from decree of United States Circuit Court for the Northern District of Illinois, dismissing a suit to enjoin the collection of an in-

heritance tax of more than $5,000 under the laws of Illinois.

Supersedeas bond, $500.

(*d*) Sawyer v. Kochersperger, 170 U. S., 303 (1897).

Error to Circuit Court for the Northern District of Illinois to review judgment for defendant for inheritance tax of $6970.

Supersedeas bond, $500.

II. The established rule of this Court is that upon the facts existing at the time the security was accepted, the action of the Justice within the statute and within the rule of practice is, in the absence of fraud, final, and it will be presumed that every fact was presented to him that could have been presented.

Jerome v. McCarter, 21 Wallace, 17, 31.
Draper v. Davis, 102 U. S., 370.
Ex parte French, 100 U. S., 1, 5.
Railroad Co. v. Schutte, 100 U. S., 644, 646.
Martin v. Hazard Hotel Co., 93 U. S., 302.

The moving papers here set up no change in the circumstances of the case, or of the parties or of the surety upon the bond, since the allowance of the bond herein, and the annexed answering affidavit of the solicitor for the plaintiff in error shows that nothing has occurred since that time which can in any way prejudice the defendants in error.

The sole purpose of the plaintiff in error has been to secure a speedy and final determination of the important questions involved in this cause, and in all her procedure she has endeavored to comply strictly with the rules and practice of this Court. If in any respect the Court deems that the interests of the defendants in

error require further protection, the plaintiff in error will immediately comply with any suggestion the Court may make. The interests not only of the plaintiff in error, but of many other citizens of the country will be served by the early settlement of the questions raised herein.

III. The relief demanded by the defendants in error should be denied.

Dated November 15, 1902.

Respectfully submitted,

EDWARD W. SHELDON,

ROBERT WILKINSON,

Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

ISABELLA F. BLACKSTONE individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

October Term, 1902, No. 423.

STATE OF NEW YORK,
County of New York,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

EDWARD W. SHELDON, being duly sworn, says:

FIRST. That he is the solicitor for the plaintiff in error herein; that the writ of error and citation herein were granted by the Honorable RUFUS W. PECKHAM, Associate Justice, on August 4, 1902; that a bond in the penalty of $1,000, with the American Surety Company of New York as surety, was approved by such Justice on the same day, after a full statement of the facts and circumstances of the case, and that the record and proceedings herein were filed in the office of the Clerk at Washington on August 15th, 1902.

SECOND. Deponent denies that he ever informed the solicitor for the defendants in error herein that the prop-

erty of Timothy B. Blackstone had been removed from the State of New York, as alleged in the affidavit of said solicitor, verified November 12th, 1902, attached to the motion papers herein. On the contrary, deponent is informed and believes that in addition to large amounts of other property the plaintiff in error is possessed, and has continuously since the death of said Timothy B. Blackstone in May, 1900, been possessed of more than enough property in the State of New York to pay any tax that may be levied pursuant to the proceedings sought to be reviewed herein.

THIRD That the plaintiff in error is anxious to prosecute the writ of error with all possible diligence; that the solicitor for the defendants in error promised deponent in September, 1902, that he, the said solicitor, would join with deponent in asking the Court to advance this cause for argument; that deponent thereupon prepared motion papers to secure such advance, but the solicitor for the defendants in error refused to join in such motion; that the reason assigned by said solicitor for such refusal was his fear that if the Court advanced the cause, it might be reached for argument before he could prepare his brief; that deponent a few days later renewed his request that such joint motion be made; that this request was again denied; that thereafter and on November 1, 1902, deponent was served with Mr. Justice PECKHAM'S order to show cause why the approval of the appeal bond herein should not be canceled; that deponent thereafter gave notice of an application to the Court on Monday, November 10th, 1902, to advance said cause, and that such motion is still pending and undetermined.

FOURTH. That in anticipation of the appeal herein the plaintiff in error was willing to pay, under protest, the amount of the tax claimed by the State of New York, but was advised by deponent that under the terms of the New York Transfer Tax law there was doubt as to whether an ap-

plication to refund the amount of taxes erroneously paid must not be made within two years from the date of entry of the order fixing the tax, and that in the present case such period of two years would expire February 21st, 1903; that since the entry of the order of the Court of Appeals of the State of New York and the order of the Surrogates' Court of the County of New York made thereon and dated June 30th, 1902, there has been no change in the circumstances of the case or of the parties or of the surety on the bond, which would prejudice or affect the right of the State of New York to collect any tax that may finally be adjudged to be due herein; that the plaintiff in error is willing to give any additional bond that may be required by the Court herein, but that deponent believes that the penalty of the bond already given herein was fixed in complete accordance with the rules and practice of this Court, and is sufficient.

EDWARD W. SHELDON.

Subscribed and sworn to before me this 15th day of November, 1902.

DANIEL MOYNAHAN,
Notary Public,
Kings County.

{ Notary Public's Seal }

Certificate filed in New York County.

FILE COPY.

Office Supreme Court U. S.
FILED
DEC 30 1902
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually, and as executrix of the last will and testament of Timothy B. Blackstone, deceased,

Plaintiff in error,

AGAINST

NATHAN F. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York.

October Term, 1902.

No. 423.

Error to the Surrogates' Court of the County and State of New York.

BRIEF FOR THE PLAINTIFF IN ERROR.

EDWARD W. SHELDON,
Counsel for plaintiff in error.

Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually, and as executrix of the last will and testament of Timothy B. Blackstone, deceased,

Plaintiff in error,

AGAINST

NATHAN F. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York.

October Term, 1902.

No. 423.

Error to the Surrogates' Court of the County and State of New York.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT.

This is a writ of error to the Surrogates' Court of the County of New York, filed August 19, 1902, to review the proceedings in that Court, in the Appellate Division of the Supreme Court of the State of New York and in

the Court of Appeals of that State, to levy a transfer or succession tax of $77,536.09 under the laws of the State of New York upon certain indebtedness of a New York trust company and a firm of private bankers of the City of New York, to Timothy B. Blackstone, the testator above named, a resident of the State of Illinois.

This proceeding was taken under Article X of the Tax Law of the State of New York, and a copy of the article is attached as an appendix to this brief.

The proofs presented show the following undisputed facts:

Mr. Blackstone, who for many years prior to his death was domiciled in the city of Chicago, died there May 26, 1900, at the age of seventy years (Record, fol. 15). He left a will which was proved before the Probate Court of Cook County, Illinois, July 17, 1900, and letters testamentary upon which were issued to Isabella F. Blackstone, his widow, the plaintiff in error here (fol. 17). By the terms of this will he made legacies aggregating $800,000 to collateral relatives, strangers, and Illinois and Connecticut charitable organizations; the residue of his estate, real and personal, he gave to his wife absolutely (fols. 22–25). These legatees, no one of whom resided in New York, have been paid in full by the plaintiff in error and, with one exception, without deduction for succession taxes, Federal or State (fols. 18–19). Mr. Blackstone's estate consisted of real property in the city of Chicago appraised at $236,793; miscellaneous stocks, bonds and other personal property in that city at the time of his

death, $250,454.86; $4,843,456.72 due him on a deposit account with the United States Trust Company of New York, and $10,692.24 due him on a like account with the firm of Cuyler, Morgan & Co., bankers, of the City of New York, and transfer agents of the Chicago and Alton Railroad Company, an Illinois corporation (fols. 48–50, 17–18).

The origin of this deposit with the trust company, which presents the main question sought to be reviewed here, was as follows: For 34 years before his death Mr. Blackstone was president of the Chicago and Alton Railroad Company. In March, 1899, in pursuance of an offer to the stockholders of that company to purchase its common stock at $175 a share, and its preferred stock at $200 a share, the control of the company was acquired by a syndicate of capitalists. Mr. Blackstone thereupon resigned his presidency and followed the other stockholders in selling his stock to the syndicate. At the price offered, the amount due him for his own 15,077 shares of common stock and 11,450 shares of preferred stock, was $4,881,522.21 (fols. 15–16). In addition he held as trustee under the will of Henry B. Norton, a citizen of Connecticut, certain additional shares of the same stock, aggregating $299,527.06 in value (fols. 15–16). The trust company had been selected by the syndicate as the depositary of stock purchased, and was authorized, upon receiving the certificates of stock, to pay the agreed price therefor. When Mr. Blackstone had determined to sell his stock he wrote the trust company asking whether in case of

such sale he might leave the proceeds with the trust company; that he was at a loss to know how safely to invest these proceeds, and might wish to deposit a considerable sum for several months. The trust company answered that it would receive such proceeds, hold them subject to his order, and allow interest thereon at the rate of two per cent. per annum, subject to reduction in the rate at any time upon notice, but that if he required more than $100,000 at any time, he should not draw upon the trust company without at least two days' notice. A few days later Mr. Blackstone sent his certificates of stock from Chicago to the trust company, and asked that the proceeds of sale thereof be credited in account with himself to be held as a deposit upon the trust company's usual terms as to interest and withdrawal of the same (fols. 87–91). Upon receipt of the stock certificates the company on March 31, 1899, made a book transfer from its account with the Chicago and Alton purchasing syndicate to a new account in his name in its ledger entitled "Deposits in Trust," of the sum of $4,881,522.21. No certificate of deposit nor pass book was issued, and the only evidence of the deposit was this book entry and the correspondence above mentioned (fols. 85–86). The rate of interest allowed by the trust company was of its own motion raised to two and one-half per cent. (fol. 91). Its usual terms of deposit were that all payments thereof were to be made in current funds, and that five days' notice of withdrawal must be given by the depositor (fol. 86). Between March 31, 1899,

and his death Mr. Blackstone withdrew and invested $192,989.11 of this sum, so that after crediting to the account the interest which accrued thereon to the date of his death, the balance above mentioned of $4,843,456.72 was found (fols. 17, 92). In the case of the $299,527.06 held by him as trustee of the Norton estate, he effected such withdrawal and reinvestment prior to August 10, 1899 (fol. 94). His fixed intention was to leave his personal balance with the trust company only temporarily and pending its investment (fols. 16, 94). Owing to his ill-health, which was continuous and progressive from the date of the deposit until his death, he was able to carry out this intention only in small part (fol. 95). On several occasions he expressed disappointment at this failure, and said that it was causing him great pecuniary loss (fol. 94).

The business done by the trust company is not like that of a bank of deposit. It does not receive, pay out or hold actual money; nor is it by law required to maintain a lawful money reserve (fol. 86). Deposits made with it take the form of checks, drafts and other orders for the payment of money, and are in turn endorsed by it for deposit with one of its regular banks of deposit. Payments made by the trust company to its depositors are not made in money but in checks drawn by it upon one of those banks. In view of this method of conducting its business, the company is in the habit of keeping all but a small portion of its deposits invested in government bonds,

loans on collateral, New York City bonds, corporate bonds and stocks, bonds and mortgages, and other securities, and on the day of Mr. Blackstone's death, May 26, 1900, the aggregate amount to the company's credit in its banks of deposit did not exceed $3,800,000 (fol. 86).

Shortly after the will was admitted to probate, proceedings were taken in the County Court of Cook County, Illinois, under the Illinois Inheritance Tax Law (act of June 15, 1895) to fix the tax due from Mr. Blackstone's estate. These proceedings terminated in a final order appraising his total estate, including the New York credits, at $5,341,396.82, and fixing the tax thereon at $64,625.56 (fols. 71–83), and this sum was on November 26, 1900, and before any notice of the New York proceeding was given (fol. 5), paid by the plaintiff in error to the treasurer of Cook County. This tax was computed at the rate of one per cent. upon the residuary gift to the widow, and at rates varying from two to six per cent. upon the $800,000 of general legacies (fols. 80–83).

The executrix also paid a legacy tax of $21,095 to the United States Government under the War Revenue Act of 1898, and other administration expenses and debts amounting to $331,706.81 (fols. 93–4).

No probate nor administration proceedings have been had in New York (fol. 18). The testator never lived nor did business in that state (fol. 15) and left no debts there (fol. 16).

In November, 1900, application was made by the Comptroller of the City of New York to the Surro-

gates' Court for New York County to appoint an appraiser under the New York Transfer Tax Law (fol. 1). Notice of the appraisement was sent by mail to Mrs. Blackstone December 3, 1900 (fol. 5). She appeared by attorney for the purpose of contesting the jurisdiction of the Court, and in her notice of appearance as well as in her answering affidavit specifically raised various constitutional and other objections to the imposition of any tax (fols. 6–8, 19–20).

By his report filed February 19, 1901, the New York appraiser found the net value of the property subject to tax in this proceeding to be $4,553,609.58, consisting of $800,000 of general legacies taxable at five per cent., and a residue of $3,753,609.58 taxable at one per cent. (fols. 9–14). This net value was reached by deducting from the amount of the New York deposits, the proportion of the debts and administration expenses, excluding the Illinois inheritance tax and the Federal legacy tax, which the amount of the New York deposits bore to the entire estate of the testator. Upon the filing of this report an order as of course was in accordance with the procedure prescribed by the Tax Law, forthwith and without hearing entered February 20, 1901, which fixed a tax of $77,536.09 upon the New York deposits (fols. 97–98). From this order, as well as from the appraiser's report, Mrs. Blackstone appealed to the Surrogates. Notice of appeal was filed in the Surrogates' office February 25, 1901, and stated the following grounds of appeal:

"FIRST. That at the time of his death Timothy B. Blackstone, the decedent above named, was not a resident of the State of New York, and left no property in said State.

"SECOND. That the will of said decedent, by which the transfer attempted to be taxed in this proceeding was made, was duly proved before the Probate Court of Cook County, in the State of Illinois, where said decedent resided at the time of his death; that letters testamentary thereon were duly issued by said Court to this appellant, and that no proceedings for the probate of said will or the administration of said decedent's estate have been taken in the State of New York.

"THIRD. That the appellant herein, and all the other legatees named in said order, were at the time of said decedent's death, and are, residents and citizens of the United States, but non-residents of the State of New York.

"FOURTH. That if the debts due said decedent at the time of his death from the United States Trust Company of New York, and the firm of Cuyler, Morgan & Company of the City of New York, which constitute the only property appraised herein, can be deemed for any purpose property then situated within the State of New York, that such property was only transitorily within said State.

"FIFTH. That a tax upon the transfer of and succession to all of the property of said decedent upon his death, including said debts so due him from said Trust Company and firm, has been duly assessed by the County Court of Cook County, in the State of Illinois, to which jurisdiction in that behalf belonged, and paid by this appellant to the Treasurer of said Cook County.

"SIXTH. That this Court has no jurisdiction in the premises, and that this proceeding and

said appraisement, assessment, determination, report and order are void.

"SEVENTH. That the Transfer Tax Law of the State of New York was not intended to and did not in fact include in its operation any debts owing to the decedent at the time of his death by said Trust Company or firm.

"EIGHTH. That if said law had such intention or effect, said law was to that extent, and each and every part of said appraisement, assessment, determination, report and order was unconstitutional and void, for the following reasons:

1. That they impair the obligation of the contracts made by said decedent with said Trust Company and firm, respectively, and so violate Section 10 of Article I of the Constitution of the United States.

2. That they deny full faith and credit in the State of New York to the public acts, records and judicial proceedings of the State of Illinois, and so violate Section 1 of Article IV of said Constitution.

3. That they deprive citizens of Illinois and Connecticut of certain privileges and immunities of citizens of the State of New York, and so violate Section 3 of Article IV of said Constitution.

4. That they abridge the privileges and immunities of this appellant and the other legatees under the will of said decedent, and would deprive this appellant and said other legatees of their property without due process of law, and deny to them the equal protection of the law, and so violate Article XIV of amendment to said Constitution.

5. That they would deprive this appellant and said other legatees of their property without due process of law, and so violate Section 6 of Article I of the Constitution of the State of New York.

"NINTH. That said report and order erroneously fix the value of the property of said decedent passing by his will at $4,553,609.58, without deducting the sum of $64,625.56, which was paid by this appellant to the County Treasurer of Cook County, Illinois, on the 26th day of November, 1900, as the inheritance tax levied and assessed upon the right of succession of the legatees under said will to all the property of the decedent, including the amounts owed him at the time of his death by said Trust Company and firm; and also without deducting the sum of $21,095 paid by this appellant as the Federal legacy tax assessed upon the $800,000 of general legacies given by said will" (fols. 103–106).

Surrogate Fitzgerald, before whom the appeal was argued, reversed the order of February 20, 1901, and entered a final order July 26, 1901, declaring the entire estate of the testator exempt from the New York transfer tax (fols. 107–109). The opinion of the Surrogate is printed at folios 112–114, and is reported in 35 Misc. Rep. 585 (N. Y.). From this order an appeal was attempted to be taken by the Comptroller of the City of New York on August 12, 1901, to the Appellate Division of the Supreme Court in the First Department (fol. 110). Before Surrogate Fitzgerald rendered his decision, chapter 173 of the laws of 1901, taking effect April 1, 1901, terminated the connection of the Comptroller of the City of New York with transfer tax proceedings, and devolved all of his duties and rights in that regard upon the Comptroller of the State of New York. Mrs. Blackstone, individually and as

executrix, therefore duly moved to dismiss this appeal upon the ground that the Comptroller of the City of New York was neither interested in nor aggrieved by the order appealed from (fols. 127–8). The motion was denied by the Appellate Division on the ground that "The Comptroller of the City of New York having properly instituted these proceedings they must necessarily be conducted in his name (notwithstanding that his powers and duties in relation thereto have devolved by law upon the Comptroller of the State of New York), until substitution of parties has been made" (fol. 146).

Mrs. Blackstone then moved for leave to appeal to the Court of Appeals from the order denying her motion to dismiss the appeal, and that the Appellate Division certify that a question of law had arisen regarding the right of the Comptroller of the City of New York to take such appeal, which, in the opinion of the Appellate Division, should be reviewed by the Court of Appeals (fols. 139–140). This motion also was denied (fols. 143–144).

Having denied both these motions, the Appellate Division subsequently reversed Surrogate Fitzgerald's order upon the ground that the *Matter of Houdayer*, 150 N. Y. 37, was controlling authority as to the taxability of the Blackstone deposits. The opinion of the Appellate Division, which also cites in its support *Matter of Romaine*, 127 N. Y. 80; *Matter of Whiting*, 150 N. Y. 27, and *Matter of Bronson*, 150 N. Y. 1, is printed at folios 122 to 125, and is reported in 69 App. Div. 127 (N. Y.)

Mrs. Blackstone, individually and as executrix of her husband's will, thereupon appealed to the Court of Appeals of the State of New York, and stated in her notice of appeal that she intended to bring up for review the two previous orders of the Appellate Division, one denying her motion to dismiss the appeal of the Comptroller of the City of New York to the Appellate Division, and the other denying her motion to appeal to the Court of Appeals from such order of January 29, 1902 (fols. 119, 120).

The Court of Appeals denied the motion to dismiss the appeal of the Comptroller of the City of New York to the Appellate Division, and affirmed the final order of the Appellate Division which reversed Surrogate Fitzgerald's decision. The only opinion or reason assigned by the Court of Appeals for this affirmance was as follows (fol. 174): "Order affirmed, with costs, on the ground that this case is controlled by the *Matter of Houdayer* (150 N. Y. 37)." O'Brien, J., dissented (171 N. Y. 682.) The remittitur and record having thereupon been sent back to the Surrogates' Court, a formal order was entered in that court June 30, 1902, making the order of the Court of Appeals the order of the Surrogates' Court (fols. 151–152).

Mrs. Blackstone then sued out a writ of error to this Court.

Specification of Errors.

First. That the property involved in this proceeding consists of debts due by residents of New York to a

decedent who resided in Illinois; that such debts were not within the state of New York when the decedent died; that his will has been proved and all of his legatees reside without that state, and that accordingly the courts of New York have no jurisdiction to assess a tax upon such debts, or upon the succession thereto.

SECOND. That if such debts could upon any theory be regarded as property within the state of New York, they were only transitorily there, and could not under the Federal constitution or otherwise be taxed there.

THIRD. That the taxation of such debts in this proceeding impairs the obligations of the contracts out of which such debts arose, and is therefore unconstitutional.

FOURTH. That such debts have already been adjudged to be liable to a succession tax in the state of Illinois, and their subsequent taxation in the state of New York is unconstitutional: (1) because it is double taxation, and (2) because it denies full faith and credit to the public acts, records and judicial proceedings of the state of Illinois.

FIFTH. That the taxation of such debts in New York is unconstitutional because it deprives the executrix of and legatees under said will, who are citizens of other states, of certain privileges and immunities of citizens of the state of New York.

SIXTH. That such taxation is unconstitutional both in method and result, in that it abridges the privileges and immunities of such executrix and legatees, deprives

them of their property without due process of law, and denies to them the equal protection of the law.

SEVENTH. That the courts below should have dismissed the proceeding to impose a transfer tax upon the property in question.

BASIS OF THE JURISDICTION OF THIS COURT.

The constitutional objections recited in the foregoing assignment of errors were taken on the threshold of the proceeding and thereafter were successively urged upon the courts below, both in the briefs and in the oral arguments. While sustained in part at least by the Surrogate, they have been disregarded by the Appellate Division and the Court of Appeals. The fact that the objections were not expressly considered in the opinions of those courts, is not material (*Chicago, Burlington & Quincy Railroad Company* v. *Chicago*, 166 U. S. 226, 231). Both courts founded their conclusion upon the theory that this case was controlled by the *Matter of Houdayer*, 150 N. Y. 37. Reference to the Houdayer case will show that the points raised by the State Tax on Foreign Held Bonds case, 15 Wall. 300, were considered (3 App. Div. 476). But irrespective of that fact, as the record shows that the unconstitutionality of the law had been repeatedly called to the attention of the courts below, it follows that the judgment appealed from "necessarily denied the federal rights thus specially set up; for that judgment could

not have been rendered without deciding adversely to such claims of right" (166 U. S. 231).

The ultimate determination of the constitutionality of the proceedings below thus rests upon this Court.

Scott v. *McNeal*, 154 U. S. 34, 45.

Summary of the Argument.

I. The debts in question had no taxable *situs* within the State of New York.

1. The established principles of taxation prohibit the taxation of intangible property owned by non-residents.

2. These principles have been embodied in the New York statutory scheme.

3. The same principles apply to succession taxes.

4. The few decisions where money in bank has been subjected to a succession tax are distinguishable from the present case, because:

(*a*) The deposit here was substantially different, both in fact and law.

(*b*) The Blackstone succession had already been adjudged to be taxable in Illinois.

(*c*) The constitutional considerations involved in the present case had not been finally determined.

II. If the indebtedness of the trust company could,

upon any theory, be regarded as property within the State of New York, it was not taxable in that State, because it was only transitorily there.

III. A construction of the statute which permits double taxation should be avoided.

IV. As succession, inheritance and transfer taxes in the United States are levied upon the power to transmit the title to property and not upon the property itself, the State of New York was without jurisdiction to tax the exercise of a power which it did not create and could not take away.

V. Where any doubt exists as to liability to a succession tax, the doubt should be resolved in favor of the person sought to be taxed.

VI. The taxation in this proceeding of unsecured, intangible debts due Mr. Blackstone from residents of New York would violate the Federal Constitution, because:

1. It would impair the obligation of the contracts of deposit.

2. It would deny full faith and credit to the public acts and judicial proceedings of the State of Illinois.

3. It would curtail in New York privileges and immunities of citizens of Illinois.

4. It would abridge the privileges and immunities of the legatees, would deprive them of their property without due process of law, and would deny them the equal protection of the laws.

VII. The courts below had no jurisdiction to assess

a transfer tax, and Surrogate Fitzgerald's decision to that effect was right, and should be sustained and reinstated.

POINT I.

THE DEBTS IN QUESTION HAD NO TAXABLE SITUS WITHIN THE STATE OF NEW YORK.

It should be remarked at the outset that it does not appear upon what theory the $10,692.24 due Mr. Blackstone by the firm of Cuyler, Morgan & Company was treated as assessable in New York. It is probable that, owing to the much greater size of the debt due from the trust company, the appellate courts below overlooked the distinction between the two debts. However that may have been, it is clear that the account with the firm was not controlled by the reasoning advanced by those courts.

STATUS OF THE TRUST COMPANY DEBT.

What was appraised for taxation in this proceeding was nothing more than two debts due from solvent citizens of New York to a citizen of Illinois. In describing these debts as "deposits" we speak figuratively. They were intangible, inidentifiable and incapable of physical *situs*. They were not subject to levy and sale under an execution in New York, nor could they have been replevied there. In order to collect or transfer them it was not necessary to take out letters testamentary or of administration in that state (*Toronto*

General Trust Company v. *Chicago, Burlington and Quincy Railroad Company*, 123 N. Y. 37, 47.) In its inception the debt due by the United States Trust Company was merely a credit transferred from the Chicago and Alton syndicate to Mr. Blackstone, and became part of the debtor's intangible resources, and was used for its profit. The proof in this case shows precisely what deposits with the trust company mean. No money passes; the trust company holds no money, pays out no money; it is not a bank; it is itself a depositor with its regular banks of deposit. When it wishes to pay the amount due one of its depositors it does so by giving him a check on one of these banks. The amount due Mr. Blackstone was not payable on demand, for the trust company was entitled to a notice of five days before any portion of the deposit was paid (fol. 86), or at least was entitled to a notice of two days before a larger sum than $100,000 could be demanded (fol. 88). Not only is this true, but the further significant fact appears that, on May 26, 1900, the date of Mr. Blackstone's death, when the taxable transfer, if any, took place, the trust company had not to its credit in any banks balances in excess of $3,800,000, although it owed to Mr. Blackstone alone $4,843,000 (fol. 86). The company's business is that prescribed by its charter, namely, receiving moneys in trust, accumulating them at an agreed rate of interest, executing any trusts committed to it by persons, corporations or courts, acting as trustee of corporate mortgages, acting as fiscal or transfer agent for corporations, purchasing or selling stock,

bonds and other securities, and acting as executor, administrator, committee, guardian or receiver (chapter 433, laws of 1892).

No certificate of deposit nor pass book was issued to Mr. Blackstone. The amount due him was entered in the company's general ledger entitled "Deposits in Trust," and this book, together with the correspondence between the parties which is in the record (fols. 88–91), supplied the only evidence of the contract between them (fol. 86). The indebtedness immediately became the property of the debtor and was used and protected by the laws of New York for the benefit of the debtor, not of the creditor. For the benefit of that protection the debtor was already taxed. If the amount of the deposit had been lost or stolen, the debtor and not the depositor would have been the sufferer.

"It is commonly said," to quote from the second edition of Judge Cooley's work on Taxation, at page 19, "that taxation and protection are reciprocal; and this, if rightly understood, is correct, though some subjects receive the protection of government which are not taxable, and some may be taxed though not protected." And if this limitation exists where the protection is primary, as in the case of certain resident owners, it does not seem unreasonable if the indirect interest of a non-resident creditor in the solvency of his debtor is exempted from a tax burden.

Even in the case of a bank its relation to a depositor is, of course, that of debtor and creditor (*Shipman* v. *Bank of the State of New York*, 126 N. Y. 318, 327; *U. S.* v.

Wardell, 172 U. S. 48, 55; *Clason* v. *City*, 46 La. Ann. 1, 5).

In the last cited case, the Supreme Court of Louisiana in exempting from current taxation a New Orleans' bank deposit belonging to a non-resident firm, used this language:

> "Under the principles enumerated in those cases the fact that the plaintiff has a resident clerk acting for it in the city of New Orleans, and that it has an office, and pays a license there, is unimportant. For the purpose of a determination of the issue involved herein we have to deal with the plaintiffs as *non-residents*, and *in so dealing with them* we are of the opinion that the judgment of the lower court is correct. We can not distinguish between the debt due to the plaintiffs by a bank as arising from a deposit to the credit of the firm in money and that due to it from any other cause.
>
> "The relations between the plaintiff and defendant are those of creditor and debtor. The moneys were not specially deposited and to be identically restored. They went into the mass of the bank's money with the understanding that they might be used and should be the basis of items in a debit and credit account. *Sims* v. *Bean*, 10 An. 347; *Mathews, Finley & Co.* v. *Their Creditors*, 10 An. 344."
>
> *Clason & Co.* v. *City*, 46 La. Ann. 1, 4, 5.

This case was qualified in *Bluefield Banana Company* v. *Board of Assessors*, 49 La. Ann. 43, but not, as we believe, in such a way as to affect the present discussion. See *New Orleans* v. *Stempel*, 175 U. S. 309, 314; *Liverpool and London and Globe Insurance Company* v. *Board of Assessors*, 51 La. Ann. 1028; *Comp-*

toir National D'Escompte de Paris v. *Board of Assessors*, 52 La. Ann. 1319, 1329.

It has, however, sometimes been held that for the purposes of taxation money in bank may be treated as cash; but the trust company does not do the business of an ordinary bank. That is not the function of such corporations in New York. As was said by the Court of Appeals of a trust company's status: "Its relations with a depositor are obviously those of a debtor and creditor. The moneys belong to the company when deposited, and through their use in the permitted ways, are gained moneys with which to make the interest payments accrued" (*People* v. *Binghampton Trust Co.*, 139 N. Y. 185, 189). A bank has been defined by Worcester as "An establishment for the custody and issue of money," and the manifest and material distinctions between those functions and the corporate powers of the trust company will appear from an examination of the charter of the company, a copy of which is attached as an appendix to this brief. In fact the company was specifically held not to be a banking institution in *United States Trust Company* v. *Brady* (20 Barb. 119), and this view has since received the highest support. Thus the Court of Appeals has said in a recent case: "It is very obvious that trust companies are not in the legal or commercial sense engaged in the business of banking" (*Jenkins* v. *Neff*, 163 N. Y. 320, 330), and this Court has on two occasions used similarly emphatic language. "Trust companies, however, in New York, according to the powers conferred

upon them by their charters, and habitually exercised, are not in any proper sense of the word banking institutions" (*Mercantile National Bank* v. *New York*, 121 U. S. 138, 159; *Jenkins* v. *Neff*, 186 U. S. 230, 234).

I. THE ESTABLISHED PRINCIPLES OF TAXATION PROHIBIT THE TAXATION OF INTANGIBLE PROPERTY OWNED BY NON-RESIDENTS.

We shall now consider the proposition stated at the beginning of this point in the light of general principles of taxation. The following authorities will, we think, sustain our contention:

1. *Decisions of the Federal Courts.*

"All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident."

Marshall, C. J., *M'Cullough* v. *Maryland*, 4 Wheat, 316, 429.

"Nor shall we enquire into the competency of the legislature of Pennsylvania to impose this tax, upon general principles, as we shall place the objection upon other and distinct grounds, though we must say, that the tax upon the promissory note or bond, given by the resident debtor, and the withholding of the amount from the interest due to the non-resident holder, would seem to be a tax upon such non-resident. It is not a tax of the money lent, because that belongs to the resident debtor, for which he is taxable; it is a tax on the security, the bond, which is in the hands of the non-resident holder. * * *

"Our conclusion on this branch of the case is, that to permit the deduction of the tax from the coupons in question, would be giving effect to the acts of the legislature of Pennsylvania upon property and interests lying beyond her jurisdiction."

Nelson, J., *Railroad Co.* v. *Jackson*, 7 Wall. 262, 267, 268.

"Corporations may be taxed, like natural persons, upon their property and business. But debts owing by corporations, like debts owing by individuals, are not property of the debtors in any sense; they are obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts of corporations, belongs to the creditors, to whom they are payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citations from numerous adjudications, but no number of authorities, and no forms of expression could add anything to its obvious truth, which is recognized upon its simple statement."

Field, J., *State Tax on Foreign Held Bonds Case*, 15 Wall. 300, 319.

In *Savings Society* v. *Multnomah Co.*, 169 U. S. 421, the Court modified some of the language last quoted so far as it applied to the intangible quality of a real estate mortgage, and held that such a mortgage belonging to a non-resident, *but not the bond*, might be taxed in the state where the mortgaged land was situated.

But that the general effect of the earlier decision was not limited, will appear from the following language of Gray, J.:

> "Taking all the provisions of the statute into consideration, its clear intent and effect are as follows: The personal obligation of the mortgagor to the mortgagee is not taxed at all. The mortgage and the debt secured thereby are taxed, as real estate, to the mortgagee, not beyond their real cash value, and only so far as they represent an interest in the real estate mortgaged. The debt is not taxed separately, but only together with the mortgage, and is considered as indebtedness within the State for no other purpose than to enable the mortgagor to deduct the amount thereof from the assessment upon him, in the same manner as other indebtedness within the State is deducted." * * *
>
> The State may tax real estate mortgaged, as it may all other property within its jurisdiction, at its full value. It may do this, either by taxing the whole to the mortgagor, or by taxing to the mortgagee the interest therein represented by the mortgage, and to the mortgagor the remaining interest in the land. And it may, for the purposes of taxation, either treat the mortgage debt as personal property, to be taxed, like other choses in action, to the creditor at his domicil; or treat the mortgagee's interest in the land as real estate, to be taxed to him, like other real property, at its *situs*." 169 U. S., 425, 427–8.

So in *New Orleans* v. *Stempel*, *supra*, the Court held that money, municipal bonds and bonds secured by mortgages on New Orleans real estate, which were owned by a resident of New York, but were permanently held and managed by an agent in New

Orleans, were subject to taxation in the latter city. In the course of its opinion the Court quoted at page 320 the following sentence from *State Tax on Foreign Held Bonds, supra.*

> " 'But other personal property, consisting of bonds, mortgages and debts generally, has no situs independent of the domicil of the owner, and certainly can have none where the instruments, as in the present case, constituting the evidences of debt, are not separated from the possession of the owners,'" and then continued: "This last sentence, properly construed, is not to be taken as a denial of the power of the legislature to establish an independent situs for bonds and mortgages when those properties are not in the possession of the owner, but simply that the fiction of law, so often referred to, declares their situs to be that of the domicil of the owner, a declaration which the legislature has no power to disturb when in fact they are in his possession." * * *
>
> "The same doctrine" (that bills and notes may be made by statute leviable upon under execution) "was reaffirmed in *Stockton* vs. *Stanbrough*, 3. La. Ann. 390. Now, if property can have such a situs within the State as to be subject to seizure and sale on execution, it would seem to follow that the State has power to establish a like situs within the State for purposes of taxation.
>
> "It has also been held that a note may be made the subject of seizure and delivery in a replevin suit. *Graff* vs. *Shannon*, 7 Iowa 508; *Smith* vs. *Eals*, 81 Iowa 235; *Pritchard* vs. *Norwood*, 155 Mass. 539.
>
> "It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found,

> irrespective of the domicil of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin; and yet they are but promises to pay—evidences of existing indebtedness. Notes and mortgages are of the same nature; and while they may not have become so generally recognized as tangible personal property, yet they have such a concrete form that we see no reason why a State may not declare that if found within its limits they shall be subject to taxation." 175 U. S. 320, 322.

In *Bristol* vs. *Washington County*, 177 U. S. 133, the taxation of Minnesota real estate mortgages belonging to non-residents of that State, was approved, and the following language of the Minnesota Supreme Court (*In re Jefferson*, 35 Minn. 215) quoted:

> "'Thus, corporeal personal property is conceded to be taxable at the place where it is actually situated. A credit, which cannot be regarded as situated in a place merely because the debtor resides there, must usually be considered as having its *situs* where it is owned, at the domicil of the creditor. The creditor, however, may give it a business *situs* elsewhere; as where he places it in the hands of an agent for collection or renewal, with a view to reloaning the money and keeping it invested as a permanent business.'"
>
> *Bristol* v. *Washington County*, 177 U. S. 133, 141.

The application of this rule to money deposited in bank and other solvent but unsecured credits, was thus made by Judge Sawyer:

> "No particular number of coins can be set aside as belonging to any particular depositor.

> The general depositary has a right to mingle the money with other moneys; use the surplus moneys deposited as his own and at his own discretion. The deposit is not special; it is simply an open money account. The depositor is only entitled to so much money in amount, and to no particular money, which may or may not be paid when his check is presented, according to the ability and will of the bank with which it is deposited. The depositor is, in law, only a creditor to the amount of the balance held by and due from the bank or banker on an open account. He could not replevy or recover possession of any particular money. The only way to enforce payment would be to bring a suit for any balance due, as in case of money due on any other open account, as for goods sold and delivered. It is but a chose in action. Under the authorities cited, clearly, independent of statutory provisions to the contrary, such credits have no *situs* for taxation against the creditor apart from the person of the depositor."
>
> *City and County of San Francisco* v. *Mackey*, 22 Fed. Rep. 602, 608.

From the more recent decisions, the following language of Taft, J., in *Walker* v. *Jack*, 60 U. S. App. 124, 128, may also be cited:

> "The general rule for determining the *situs* of personal property is that it follows the person of the owner and has its *situs* at his residence. With respect to tangible personal property, however, it is well settled that it may be taxed by the sovereignty having jurisdiction over the place which is its actual *situs*, though the owner live in another jurisdiction. Intangible personal property, however, like choses in action and credits, can, as a general rule, only be taxed at the residence of the owner. *Case of the State*

Tax on Foreign-Held Bonds, 15 Wall. 300; *Kirtland* v. *Hotchkiss*, 100 U. S. 491, 498. The language of the former of these cases has been modified somewhat in *Savings & Loan Soc.* v. *Multnomah County*, 169 U. S. 421, 428, where it was held to be within the power of a state to tax the interest of a non-resident mortgagee in the mortgaged property; but the earlier case is still authority for the general rule that a credit is taxable only at the residence of the creditor."

See, also, *De Vignier* v. *New Orleans*, 4 Woods, 206, 207.

Yost v. *Lake Erie Transp. Co.*, 112 Fed. Rep. 746 (C. C. A., VI. Cir.)

II. *Decisions of other States.*

Among the many authorities where the maxim *mobilia personam sequuntur* is applied to the taxation of intangible personal property, the following may be cited:

"We proceed in the second place to consider the nature and character of a debt or chose in action.

"It has not a visible, tangible form. The note, bond, or account even, may be evidence of a debt, but it is not the debt itself. The specific money when loaned, and received by the borrower, is no longer the property of the creditor. It is soon merged in the circulating mass, and the creditor can neither identify and claim it, nor put his hand upon any property purchased with it, and say that that is his. The money may be invested in real estate, or manufacturing, or merchandizing, or speculation. It may prove a profitable investment, or it may in a short time prove a total loss. It is all the same to the creditor so long as his debtor's ability to pay is unimpaired. He has simply a right to receive a given sum of money with interest or damages

for its detention. It is a personal right, and accompanies the person of the creditor. The debtor is under a corresponding obligation to pay the demand. The right to receive is valuable, and through it an income is derived. The right may with propriety be taxed. The obligation to pay is a burden, and has never, to our knowledge, been the subject of taxation. It seems to us therefore that the appropriate place to tax money at interest, is where the creditor resides, and that for that purpose it may with propriety be said to be located with the creditor."

Kirtland v. *Hotchkiss*, 42 Conn. 426, 438; affirmed 100 U. S. 491.

"The *situs* of the debt for purposes of taxation and usually for all purposes, is with the creditor."

Balk v. *Harris*, 124 N. C. 467, 468.

"The general rule is, that personal property of a tangible character is to be assessed where situated, without reference to the domicile of the owner. Debts and choses in action are a species of intangible property that, for purposes of taxation, are generally held to be situated at the domicile of the owner. A debt owing to a person is evidenced by an account, note, bond or other promise of the debtor, and is a mere chose in action, which goes with the person of the creditor, and can be properly assessed, under the great weight of authority, only in the county where the owner resides. A debt has no *situs* other than the domicile of the owner. It cannot be taxed to the debtor, for in such case it would not be a tax on property or wealth, but would be a tax on the converse and a tax on poverty."

Scripps v. *Board of Review*, 183 Ill. 278, 281, 282.

Haywood v. *Board of Review*, 189 Ill. 235.

Matzenbaugh v. *People*, 194 Ill. 108, 116, 117.

Forcible language was likewise used by Judge Lurton, of the Tennessee Supreme Court, now the senior United States Circuit Judge for the Sixth Circuit:

> "The bond is property, but it is the property of the owner—the creditor, and not the debtor. It is not like shares of stock, which is not a debt but which represents the interest owed by the stockholder in the profits of a business conducted here by his agents. The owner of the bond has no interest in the business of the corporation, and no control over it whatever. The losses of the business must be borne and its profits shared by the stockholders. In all this the creditor, by bond or otherwise, has no interest other than that which every creditor has in seeing his debtor preserve an ability to meet his debts. A tax upon the bond is not a tax upon the corporation. It is tax upon the owner of the bond. Bonds are undoubtedly subject to taxation. But where? By what government? The answer cannot be doubtful. They can only be taxed by the government having jurisdiction of the owner. The *situs* of intangible personals, such as bonds, notes, accounts, etc., is necessarily the *situs* of the owner." * * *
>
> "To sustain the jurisdiction of the State over these bonds for purposes of taxation, we must ignore or contradict the legal fiction which ascribes to such property the *situs* of the owner. If the actual *situs* upon examination should prove to be here, then the legal fiction must yield. But the actual *situs* is not here; and to sustain the jurisdiction we must create a fictitious or constructive *situs*, based upon the notion that debts are in some way property in the hands of the debtor, or that, the security for the debt being here, therefore the debt is here. By no sort of fiction can the jurisdiction of the State be held to extend to the property which a non-resi-

dent has in a debt which he holds against a resident. The creditor cannot be taxed, because he is not within the jurisdiction, and his property cannot be taxed because it is not within the jurisdiction."

Street Railroad Co. v. *Morrow*, 87 Tenn. 438.

"In *Curtis* v. *Township of Richland*, 56 Mich. 481 (23 N. W. 175), Mr. Justice Cooley indicates his opinion to be that such was not a proper construction of this section. The statute plainly recognizes the usual rule that credits are to be assessed at the domicile of the owner, and does not attempt to tax those belonging to non-residents. Such credits have no *situs* in this State. See *City of Detroit* v. *Lewis*, 109 Mich. 155 (66 N. W. 958, 32 L. R. A. 439)."

Village of Howell v. *Gordon*, 127 Mich. 517, 520, 521.

To the same effect are:

Inhabitants of Ellsworth v. *Brown*, 53 Me. 519, 521.
Catlin v. *Hall*, 21 Vt. 152, 159.
Flanders v. *Cross*, 10 Cush. 510, 514.
State v. *Ross*, 3 Zabriskie (N. J.) 517, 525.
Hopkins v. *Baker*, 78 Md. 363, 370, 371.
Balk v. *Harris*, 124 N. C. 467, 468.
Mayor, &c., of Mobile v. *Baldwin*, 57 Ala. 61, 68.
City Council of Augusta v. *Dunbar*, 57 Ga. 387, 393.
Johnson v. *DeBary-Baya Merchants Line*, 37 Fla. 499, 519.
State of Mississippi v. *Smith*, 68 Miss. 79, 83.
London & Liverpool & Globe Ins. Co. v. *B. of Comrs.* 51 [illegible]. Ann. 1028, 1031.
Court v. *O'Connor*, 65 Tex. 334, 338.
Prairie Cattle Co. v. *Williamson*, 5 Okla. 488, 492.

Worthington et. ux. v. *Sebastian*, 25 Ohio St. 1, 8.
Buck v. *Miller*, 147 Ind. 586.
City of Louisville v. *Shirley*, 80 Ky. 71, 76.
Hutchinson v. *Board of Commrs.*, 67 Iowa 183, 184.
Finch v. *York Co.*, 19 Neb. 50, 52.
Sanford v. *Town of Spencer*, 62 Wisc. 230, 231.
Re Jefferson, 35 Minn. 215, 220.
Commissioners of Arapahoe County v. *Cutter*, 3 Col. 349, 350.
Holland v. *Commissioners*, 15 Mont. 460, 461.
Johnson et. al. v. *Oregon City*, 2 Ore. 327, 330.
Walla Walla v. *Moore*, 16 Wash. 339, 340.
Estate of Fair, 128 Cal. 607, 613, 614.
Barnes v. *Woodbury*, 17 Nev. 383, 384.

In some of the States indeed the law permits the attachment of an intangible debt due to a non-resident creditor. This, however, is based upon the presence of the debtor within the jurisdiction, and the obvious distinctions between attachment and taxation have been generally recognized by the legislatures as well as by the courts of the various States. In New York, for example, an intangible debt due by a resident debtor to a non-resident creditor, as well as any other "cause of action arising upon contract," may be attached (Code of Civil Procedure, § 648), but such a debt is excluded from the list of taxable personal property (Tax Law of 1896, § 2, sub. 5). Barrett, J., stated some of the reasons for this distinction as follows:

> "There is jurisdiction to attach, but not to tax the debt. The right to attach proceeds upon

the jurisdiction over the resident debtor. There is jurisdiction to compel such debtor to pay what he owes his creditor to the latter's creditor. In that case the attachment does not create the obligation. It enforces it. The tax, however, creates the liability and also enforces it. That can only be done when the person or the property of the creditor is within the jurisdiction. The State cannot create a liability in its own favor against the non-resident creditor by the mere exercise of jurisdiction over the resident debtor. It can enforce an existing liability, but it cannot create one" (*Matter of Houdayer*, 3 App. Div. 477).

See, also, *Balk* v. *Harris*, 124 N. C. 467, 468.

III. *Other authorities on taxation.*

We may conclude this head by a citation from three text books upon the subject:

"Where a non-resident is owner of tangible property within the state, and the state imposes taxes upon it, the tax is not a charge against the owner personally, but must be enforced against the property itself. The state has no jurisdiction to assess a tax as a personal charge against non-residents; neither can the personalty of a non-resident be taxed unless it has an actual *situs* within the state, so as to be under the protection of its laws. The mere right of a foreign creditor to receive from his debtor within the state the payment of his demand cannot be subjected to taxation within the state. * * *

"These are conceded or adjudged principles, and have ceased to be the subject of discussion or argument. Corporations, it is also conceded, may be taxed like natural persons on their prop-

erty and business. But debts owing to foreign creditors by either corporations or individuals are not the subject of taxation. The creditor cannot be taxed, because he is not within the jurisdiction, and the debts cannot be taxed in the debtors' hands, through any fiction of the law which is to treat them as being, for this purpose, the property of the debtors. They are not property of the debtors in any sense; they are the obligations of the debtors, and only possess value in the hands of the creditors. With them they are property, 'but to call them property in the hands of the debtors is simply to misuse terms.'"

Cooley on Taxation (2d ed.) pp. 21, 22.

"Interests of an intangible character are taxable only where the owner makes his residence, for in contemplation of law they accompany the person of the owner; as, for instance, debts growing in one State to a person in another State are not taxable at the place of the debtor's residence."

Rorer on Interstate Law, p. 281.

"The principle therefore established in the construction of State statutes, taxing all property within the scope of their operation, is that the State can tax whatever personal property it can localize within its jurisdiction. * * * Credits owing from citizens of the State to parties outside of it obviously cannot be localized in the State of the debtor. * * * It seems that in order for the debt to be subject to the taxing power of the State, it must be reduced to a concrete form and evidenced in some tangible shape, as in a note or other written obligation, and must be actually in the State in the hands of an agent, or otherwise localized within its confines for permanent, as distinguished from temporary, use."

Judson on Taxation (1903), sec. 397, p. 507.

II. THESE PRINCIPLES HAVE BEEN EMBODIED IN THE NEW YORK STATUTORY SCHEME.

Since 1896 the entire subject of taxation has been codified into a single chapter known as the Tax Law (ch. 908 of the laws of 1896; 3 Revised Statutes, Birdseye's third ed., pp. 3525–3614). This law is divided into 281 sections and 12 articles. Article I, comprising sections 1 to 14, is entitled "Taxable Property and Place of Taxation," and is applicable to the entire law (*Matter of Huntington*, 168 N. Y. 399). Article X, comprising sections 220 to 242, is devoted to the Transfer Tax, and is printed as an appendix to this brief. The incidence of the tax is thus prescribed in section 220:

> "A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:
>
> "1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.
>
> "2. When the transfer is by will or intestate law, of *property within the state*, and the decedent was a non-resident of the state at the time of his death."

For the purposes of transfer as well as other taxation personal property is defined in subdivision 5 of § 2:

> "The terms 'personal estate,' and 'personal property,' as used in this chapter, include chat-

> tels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate."

By section 7 of the same act,

> "Nonresidents of the state doing business in the state, either as principals or partners, shall be taxed on the capital" ("all sums" in original act, ch. 37, laws of 1855) "invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the State." L. 1896, ch. 908, § 7.

This phrase "within the state" or "within this state," is as old as New York's taxing system. It has been a part of its tax law since the Revised Statutes of 1828 prescribed that "all lands and all personal estate within this state" should be liable to taxation (see 1 R. S. 387, Edition of 1829.) The clause "debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate," is taken from chapter 371 of the laws of 1851, entitled "An Act to subject certain debts owing to nonresidents, to taxation."

In recently considering the foregoing definitions, the Court of Appeals held that a non-resident's seat in the New York Stock Exchange was not capital employed in business, nor subject to taxation here (*People ex rel. Lemmon* v. *Feitner*, 167 N. Y. 1), and the Appellate Division of the First Department has within a few days determined that such exemption extends to the transfer tax (*Matter of Hellman*, App. Div., Dec., 1902). Actual capital, however, employed in business by a non-resident decedent, is subject to the latter tax (*Matter of King*, 30 Misc. 575).

While on the one hand it has been held that a non-resident is entitled to the same exemptions as a resident (*People ex rel. Bridgeport Savings Bank* v. *Barker*, 154 N. Y. 128) it has been as distinctly held on the other hand that the taxation of non-residents is purely *in rem* (*City of New York* v. *McLean*, 170 N. Y. 374, 387; *Dewey* v. *Des Moines*, *supra*, 173 U. S. 193, 203; *Bristol* v. *Washington County*, *supra*, 177 U. S. 133, 146.) This latter view apparently eliminates the theory that the non-resident owner of a debt due from a resident may properly be taxed on the ground that the State protects his property rights. This leaves only the protection to the debtor's property to justify taxation, and that taxation is already laid upon the debtor.

It will thus be seen that the New York statutory scheme provides for the taxation of only two forms of debt due from a resident to a non-resident, namely, debts due to a non-resident of the United States for the purchase of land (sub. 5, § 2) and capital of non-residents employed

in business here (§ 7). These two most significant statements of cases where the personal property of a non-resident will be subject to taxation, must have been intended as exceptions to the general rule of exemption for the intangible personal property of non-residents. *Expressio unius, exclusio alterius.*

In considering this statutory scheme the courts of New York have, with the exception of a few recent decisions upon the transfer tax law, to which we shall hereafter refer, followed the conclusions reached by this Court. Thus, Earl, J., said:

> "The power of taxation possessed by the State is a very broad and comprehensive one, and may, with some exceptions imposed by the Federal Constitution and laws passed in pursuance thereof, be exercised upon all objects within its jurisdiction. Persons and property within the State, and trades, avocations and other business carried on within the State, under the protection of its laws, whether by citizens or non-residents, may be taxed. But non-residents' property having no legal *situs* here, and business not carried on here, are beyond the jurisdiction of our State and are not the subjects of taxation here."
>
> *People* v. *Equitable Trust Co.*, 96 N. Y. 387, 393.

While Andrews, J., in one of that Court's earlier considerations of the inheritance tax law, used this language:

> "It is a general rule of law that such property (stocks, bonds and choses in action) attends the owner and has its *situs* at his domicile. It is true that that is a fiction of the law, but it is a

fiction which must prevail unless there is something in the policy of the statute or its language which shows a different legislative intent. (*People ex rel. Hoyt* v. *Commissioners*, 23 N. Y. 224; *People ex rel.* v. *Smith*, 88 *id.* 576.)"

Matter of Enston, 113 N. Y. 174, 181.

III. THE PRINCIPLES OUTLINED ABOVE APPLY WITH EQUAL FORCE TO TRANSFER OR SUCCESSION TAXES.

In construing succession tax laws, the courts have uniformly decided that jurisdiction of the person of the decedent or of his property must exist. Thus in passing upon the Pennsylvania statute, Mr. Justice Strong of this court, sitting in New Jersey as Circuit Justice, held that various claims against Pennsylvania debtors, Pennsylvania State and municipal bonds and other personal property belonging to a resident of New Jersey but situated in Pennsylvania at the time of his death, were not within that State in such a sense as to be subject to its inheritance tax. In the course of his opinion, the learned justice said:

"It is perfectly clear that the subject of taxation, whatever it may be, must be within the territorial jurisdiction of the state that imposes the tax. Hence a tax law must be construed as applying to nothing extra-territorial, no matter how general its language may be. If a tax be laid upon a person, the person must be within the jurisdiction; if upon property, the *situs* of the property must be in the state. Neither personal nor real property can have a *situs* in two states.

"A person domiciliated in another state, though he owns loans of the commonwealth of

> Pennsylvania, or stocks of its corporations, or claims against its citizens, has no estate by virtue thereof within the commonwealth. His estate or ownership is where he resides, and is taxable there because he resides there. Neither he nor his estate is within the jurisdiction of Pennsylvania."
>
> *Kinzing* v. *Hutchinson*, 14 Fed. Cas. 644, 648 (1877).

Applying this rule the New York Court of Appeals decided that bonds issued by a New York corporation, but in the possession of a non-resident owner at the time of his death and passing by his will to non-resident legatees, were not taxable under the transfer act. It seems impossible satisfactorily to distinguish the present case from that decision. In each there was a debt due a non-resident by a New York corporation, but here instead of there being physical evidence of the debt in the shape of a corporate bond secured, as an examination of the appeal record will show (150 N. Y. 1) by a mortgage on New York land, there was no tangible evidence whatever of the debt, and the debt itself was totally unsecured. In view of these facts the decision seems applicable *a fortiori* and we shall quote from it at some length:

> "Whatever may be argued in support of the right to subject the bonds of domestic corporations to appraisement for taxation purposes under this act, when physically within the state, upon some theory that they are something more than the evidences of a debt and constitute a peculiar and appreciable species of property, within the recognition of the law as well as of the business community, such argument is certainly unavailing in this case; where the bonds themselves

were at their owner's foreign domicile. They did not represent 'property within the state' in any conceivable sense. What property they represented consisted in the debt of their maker and that species of property, unquestionably, must be considered to be, as a chose in action, the holder's and owner's and to be inseparable from his personality. The Supreme Court of the United States held in the Foreign Held Bonds Case (15 Wall. 300), where the state of Pennsylvania assumed to tax the interest payable upon bonds issued by a Pennsylvania corporation, secured by a mortgage upon its property and held by a non-resident, that the tax was invalid. It will be profitable to quote some of the language of the opinion in that case, the soundness of which has never been questioned. * * * It seems difficult to furnish an argument, in support of the view that the debt owing to a creditor is the property, which follows him everywhere, and not the written or printed obligation expressing the indebtedness, that is not resumed in the foregoing opinion. In our consideration of the question, we should not lose sight of the fact that the state, through the Transfer Tax Act, is exerting its taxing power only over that as to which it had jurisdiction for the purposes of taxation; and we should not be confused, in that consideration, by statutes or decisions which bear upon the exercise of that power over residents within its territorial limits. * * *"

"In the James case (144 N. Y. 6), we had occasion to consider the operation of that act. An Englishman, who died abroad, left property deposited within this state, consisting in stocks and bonds of corporations of this and of other states. The question was considered whether, in view of these words in the act, 'which property shall be within this state,' it was its intendment to reach, for purposes of

taxation, any personal property that was not within the state, either in fact or because of the domicile here of its owner. We thought not and that it would be highly improper to impute to the Legislature an intention to tax that over which there was no jurisdiction. It is obvious that the state has no jurisdiction over a right of succession which accrues under the laws of the foreign state. That is something in which this state has no interest, and with which it is not concerned. The legal title to these bonds, or the debts they represent, vested in the personal representatives of the decedent by force of foreign laws. The decedent was a creditor, to whom the obligors in the various bonds were indebted; the extent and terms of whose obligation were evidenced by those bonds. The legal *situs* of the indebtedness was at the creditor's domicile and as the actual *situs* of the bonds themselves was, also, there, upon no theory can it be held that the provisions of the Transfer Tax Act could reach them in its operation."

Gray, J., *Matter of Bronson*, 150 N. Y. 1, 5, 6, 7, 8 (1896).

Following this decision in the *Matter of Preston*, 75 App. Div., 250 (1902) the Appellate Division of the Supreme Court held that bonds secured by mortgage on Brooklyn land but habitually kept by the owner at his house in New Jersey, were not subject to a transfer tax on his death.

So in the *Matter of Phipps*, 77 Hun 325 (affirmed on this opinion in 143 N. Y., 641), the question arose as to the liability of a legacy given by a New York testator to a non-resident, and the court held this right to a legacy was not property within the State. In the course of the opinion, Van Brunt, P. J., said:

> "But a mere chose in action, a right to recover a sum of money, has never, as yet, been given the attribute of tangibility, and this seems to be all that Phipps had at the time of his death. He had a right to claim the amount of money which his share of the residuary estate of Mrs. Fogg would result in, nothing more; no particular piece of property, no particular sum of money, no particular representatives of money or property." (77 Hun 328.)

This case was cited with approval and followed in *Matter of Bronson, supra; Matter of Chabot*, 44 App. Div. 340, 344, and 167 N. Y. 280; *Matter of Abbett*, 29 Misc. 567. In the last mentioned case the property declared exempt was policies of insurance in New York companies upon the life of a resident of New Jersey.

So land in Pennsylvania, belonging to a resident of New York, and equitably converted by her will, was relieved from the inheritance tax in the former State, because by the conversion it had lost its character as land, and the right to the proceeds being a chose in action could only be taxed in New York (*Coleman's Estate*, 159 Penn. St. 231). *In Matter of Sutton*, 3 App. Div. 208, it was held on the other hand that the doctrine of equitable conversion was inapplicable to succession taxes.

While in *Callahan* v. *Woodbridge*, 171 Mass. 595, 598, the Supreme Court of Massachusetts decided that railroad, city, State and United States bonds and "cash in hand" belonging to a non-resident and actually situated in Massachusetts at the time of his death, were subject to the inheritance tax, "because it was all tangible,

passing from hand to hand, and was as completely within the jurisdiction of our laws as ordinary chattels." A note with Kansas City mortgage security, however, was not taxed, notwithstanding the fact that the Massachusetts statute in terms applied to property "tangible or intangible." But as to whether the note and mortgage were or were not property within the jurisdiction, the Court did not deem it necessary to decide (171 Mass. 598).

IV. THE FEW DECISIONS WHERE MONEY IN BANK HAS BEEN SUBJECTED TO A TRANSFER TAX ARE DISTINGUISHABLE FROM THE PRESENT CASE.

The Court of Appeals has sustained the Appellate Division's reversal of the Surrogates' Court in this proceeding upon the supposed authority of *Matter of Houdayer*, 150 N. Y. 37. We shall, therefore, endeavor to show just what was involved in and decided by that case, and why it should not be deemed authoritative here.

(*a*) The deposit here was substantially different both in fact and law.

From the report of that case it appears that one John F. Houdayer died intestate at his residence in Trenton, New Jersey, in May, 1895. In 1876 he had opened an account as trustee under the will of Edward Husson, deceased, with the Farmers' Loan and Trust Company of New York, and had deposited moneys belonging to the trust estate as well as moneys belong-

ing to himself. This lasted as a running account for nineteen years until his death, when a balance of $2,000 was due to him, as trustee, and $71,715 to him individually. The Surrogate of New York County held these sums taxable. The Appellate Division reversed the Surrogate (3 App. Div. 474) and we shall quote from the carefully considered opinion of Barrett, J., in which the views of the Court were expressed:

> "We do not think that the debt was property within this State within the meaning of the Taxable Transfers Act. Much less was the right to an accounting with respect to such debt. It is provided by section 22 of the act in question, that the word property, as used therein, shall 'include all property or interest therein, whether situated within or without this State, over which this State has any jurisdiction for the purposes of taxation.' No more and no less. Not property generally, it will be observed. Not even 'property' as defined by the Statutory Construction Act passed later in the session of 1892 (Chap. 677), for much of what is within its definitions is 'property' over which the State cannot, as against non-residents, have any jurisdiction. Thus the act is in harmony with the authorities which hold that the power of taxation of a state is limited to persons, property and business within her jurisdiction. (Foreign-held Bond Case, 15 Wall. 300.) This jurisdiction, however, is not what the State may choose to assert, but what, as matter of fact, it possesses. Here, for instance, this State has no jurisdiction over the person of the decedent. He was, in fact, a non-resident of this State. It does not appear that he transacted business within this State, so the jurisdiction upon that head was also lacking. The question remains as to his

property. It was distinctly held in the Foreign-held Bond case (*supra*) that debts have no *situs* independent of the domicile of the creditor, and that such debts are the property of the creditor and follow his domicile. It is of no moment in the application of this rule, where the debtor resides or does business, or where he may be found. A debt can have no locality separate from the party to whom it is due. The debt there was evidenced by the bonds of a domestic corporation, but as such bonds were not within the taxing State, as in fact they were in the actual possession of the owner at his foreign domicile, the Supreme Court of the United States held that the property evidenced thereby was not within the taxing State and was not taxable there.

"Thus clearly this State has no jurisdiction, for the purpose of taxation, over the right in action here possessed by the decedent. It asserted no such jurisdiction in the act in question, nor could it have done so. Its jurisdiction, so far as non-resident decedents were concerned, was limited to property which had a visible and tangible existence. As to visible and tangible property, the fiction of a legal *situs* at the domicile of the owner gives way to the fact of the actual *situs*. With regard to choses in action, however, and intangible property generally, the the legal *situs* is, to all intents and purposes, the actual *situs*. (*People ex rel. Hoyt* v. *Commissioners*, 23 N. Y. 224). The debtor is not the debt, and jurisdiction over the debtor is not, for the purposes of taxation, jurisdiction over his obligation." (3 App. Div. 476–7.)

On an appeal to the Court of Appeals this decision of the Appellate Division was reversed by a divided court. As to its reasons the Court differed. Vann, J., wrote an opinion in which only O'Brien, J., concurred.

The majority of the Court concurred in a reversal on the ground "THAT A DEPOSIT OF MONEY IN A BANK, ALTHOUGH TECHNICALLY A DEBT, IS STILL MONEY FOR ALL PRACTICAL PURPOSES, AND AS SUCH IS TAXABLE UNDER THE TRANSFER TAX ACT" (150 N. Y. 41). Gray, J., and Haight, J., dissented for similar reasons to those assigned by Barrett J., in the Appellate Division.

There is no other reason nor argument assigned in support of the judgment now reviewed than that it was controlled by the conclusion we have just quoted from the Houdayer case.

In the present controversy the nature of the deposit was substantially different from that disclosed in the *Matter of Houdayer*. In the latter case there *seems* to have been actual money with the Farmers Loan and Trust Company. Moreover, it was a permanent deposit and had remained there for nineteen years. The Court of Appeals assumed, and we think erroneously, that the Farmers Loan and Trust Company did the business of an ordinary bank. In fact, the only reason assigned for the decision, in which a majority of the Court concurred, was that a *bank* deposit is money "for all practical purposes." In the present case it has been shown precisely what deposits with the United States Trust Company mean (fol. 86). The debt due Mr. Blackstone was not "virtually money," nor could it have been "converted into money upon demand."

"Obligations which circulate as money," as was said in *Hubbard* v. *N. Y. and Harlem R. R.*, 14 Abb. Pr., 275, "are payable on demand," and we think it may be

laid down broadly that for purposes of taxation substitutes for money are not to be deemed money unless they are its exact equivalent.

See

U. S. v. *Wilson*, 106 U. S. 620.

Phila. & R. R. R. Co. v. *Pollock*, 19 Fed. Rep. 401.

Hence we think it may be said with accuracy in reply to the brief decision in the Houdayer case that in the present case Mr. Blackstone left no "money" in New York; that his debtor there was not a "bank," and that the only "practical purpose" for which his debt could be called "money" was that it was due from a solvent debtor.

In *Matter of Romaine*, 127 N. Y. 80, a portion of the property assessed was permanently "invested" by deposit in New York savings banks, and the pass books were kept there in a safe deposit company.

In the *Matter of Morejon*, N. Y. Law Jour. July, 3, 1891, Surrogate Ransom held "*cash*" in New York banks and bonds in New York safe deposit companies taxable, on the authority of the Romaine case.

In the *Matter of Bondon*, N. Y. Law Jour. March 1, 1892, Surrogate Ransom reached the same conclusion on a like state of facts; and in *Matter of Simoni*, N. Y. Law Jour. January 20, 1896, Surrogate Arnold applied the rule to deposits with a New York firm and trust company which had been habitually kept there.

In the Estate of Spears, 6 Ohio Decisions 598 (Hamilton Probate Court, 1897), a Kentucky decedent's

bonds, stocks and notes in a safe deposit box in Ohio and deposits in an Ohio bank were decided to be subject to the Ohio inheritance tax law, but the fact that some of the property was tangible and some intangible was not discussed in the opinion.

In *Matter of Burr*, 16 Misc. Rep. 89 (N. Y.) the Surrogate of Westchester County felt constrained to follow *Matter of Romaine*, *supra*, in respect to savings bank deposits and money held by the decedents' attorney in New York.

On the other hand in *Matter of Bentley*, 31 Misc. Rep. 656, Surrogate THOMAS distinguished the Houdayer case, and decided that a balance of account with an individual banker in this city, for which no pass book was issued and against which no checks were drawn, had no taxable *situs* in this state.

So in *Matter of Horn*, N. Y. Law Jour., October 31, 1902, Surrogate THOMAS held for the same reason that an indebtedness to a non-resident decedent from a New York joint stock association was not taxable.

Indeed, so far as our investigation has revealed, there is not a single case in the books where an intangible, unrepresented debt due a non-resident has been subjected to an inheritance tax. Where evidences of debt have been taxed it has always been because they were tangible or passed as the equivalent of money or were *capable of larceny*.

Such a debt cannot for purposes of taxation be deemed property in the hands of the debtor, for a debt implies the negative of property.

(*b*) Unlike the Houdayer case the record here shows that this very deposit to Mr. Blackstone's credit had been judicially determined to be subject to, and had paid a legacy tax of $64,625.56 to the State of Illinois, where he resided.

(*c*) The statutory and constitutional points which are brought to the consideration of the Court in this case were not mentioned in the presentation of the Houdayer case. An attempt was made, indeed, to review in this Court the Court of Appeals' decision, but the writ of error was dismissed for want of jurisdiction, because the record failed to show that the unconstitutionality of the New York law had ever been drawn in question or called to the attention of any of the courts of that State.

Scudder v. *Comptroller*, 175 U. S. 32.

POINT II.

IF THE INDEBTEDNESS OF THE TRUST COMPANY COULD UPON ANY THEORY BE REGARDED AS PROPERTY WITHIN THE STATE OF NEW YORK, IT WAS NOT TAXABLE IN THAT STATE BECAUSE IT WAS ONLY TRANSITORILY THERE.

It is a well established canon of law that in the case of property of non-residents *in transitu*, the requisite jurisdiction to tax does not exist.

Hays v. *Pacific Mail Steamship Company*, 17 How. 596, 600.

People ex rel. Parker Mills v. *Commissioners*, 23 N. Y. 242.

People ex rel. Hoyt v. *Commissioners*, 23 N. Y. 224, 240.
24 Am. & Eng. Encyc. of Law, 435.
25 Am. & Eng. Encyc. of Law, 142–3.

This rule, which is founded not only on the commerce clause of the Constitution, but also on the general principles of jurisprudence, has thus been stated in a recent text book:

> "Legal protection and taxation are reciprocal, so that such personal property and effects of a corporeal nature, or that may be handled and removed, as receives the protection of the law, is liable to be taxed by the law where it is thus protected. But this rule does not apply to property which is in *transit*, or which is temporarily within a State, as, for instance, if a resident of one State go into another on a visit or business, traveling in his own conveyance, or carrying with him personal effects for his own use during his temporary stay, or sent into a State for sale, such property is not subject to taxation there, although entitled to and receiving the temporary protection of the law for the time being."
>
> Rorer on Inter State Law, p. 281.

In *Metropolitan Life Insurance Co.* v. *Newark*, 62 N. J. Law 74, the Newark superintendent of a New York life insurance company was in the habit of receiving premiums which he deposited from day to day, and at the end of each week would remit the total amount received, about $4,500 on the average, to the New York office. In holding that this money could not be taxed in New Jersey, the Supreme Court said:

> "It may be conceded, with the views here expressed, that foreign corporations are taxable for all personal property within this state, yet

> neither under the acts which the defendant contends will support this taxation, or any other acts of the legislature, can this assessment be upheld. It is not the personal estate of such foreign corporations within this state. This money is not the capital of such corporation used or to be used here. It has no *situs* here whatever. It is intangible, invisible and in a state of transmission from one hand to the other, and whilst in that state cannot be made the subject of taxation." (62 N. J. Law 77.)

In *Herron* v. *Keeran*, 59 Ind. 472, under a statute providing for the taxation of all personal property within the State owned by non-residents, the Court decided that notes and accounts in the hands of attorneys for collection, and municipal bonds temporarily left with a bank in the State for safe keeping, were not taxable, and said:

> " Here, the notes and accounts in the hands of the attorneys were left with them simply for collection and the remission of the moneys collected to the owner in the State of his residence; and the bonds, on the change of his residence, were temporarily left for safekeeping, not permanently to be used in this State." (59 Ind. 475.)

The Supreme Court of Indiana reached the same conclusion with reference to $4,900 worth of barrel staves piled near a railway track, and which may have been awaiting shipment for a year or more.

Standard Oil Co. v. *Bachelor*, 89 Ind. 1.

So this Court in *Coe* v. *Errol*, 116 U. S. 517, affirming the Supreme Court of New Hampshire (*Coe* v. *Errol*, 62 N. H. 303), concluded that logs in course of transportation from Maine, where they had been cut,

through New Hampshire, back into Maine, were not subject to taxation in New Hampshire, although, owing to low water in the stream, they remained in that State during the summers of 1879 and 1880.

Logs banked in the stream and waiting several months for high water were also deemed to be in transit, in *Corning* v. *Township of Masonville*, 74 Mich. 177, while coal stored on a dock at Elizabethport, in transit from Pennsylvania to New England, was likewise exempted from local taxation in *State* v. *Engel*, 34 N. J. Law 425, and *State* v. *Carrigan*, 39 N. J. Law 35.

The inability of a State to tax the vessels of non-residents, while temporarily in its harbors or waters, was recognized in *Hays* v. *The Pacific Mail Steamship Co.*, *supra*, and *Commonwealth* v. *American Dredging Co.*, 122 Pa. St. 386. In the former case, Mr. Justice Nelson said:

> "We are satisfied that the State of California had no jurisdiction over these vessels for the purpose of taxation; they were not, properly, abiding within its limits, so as to become incorporated with the other personal property of the State; they were there but temporarily, engaged in lawful trade and commerce, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested, and where the taxes had been paid (17 How. 599–600)."

The application of this principle to inheritance taxation was promptly made. Thus, in *Matter of Enston*, *supra*, it was said:

> "Suppose a foreigner should come here with negotiable securities in his possession for the

purpose of buying property here, and soon after should die here. Or suppose a merchant should come here from some other state with negotiable drafts or securities in his possession and should die here shortly after reaching this state; can it be supposed in either of such cases that it was the legislative intent that before the property of the decedent could be taken out of this state to the jurisdiction of his domicile it should be subjected to a tax to enhance the revenues of the state?" (113 N. Y. 182).

And in the *Matter of Romaine*, 127 N. Y. 80, similar language was used at pages 88–89:

"The appellant further contends that the property in question was not 'within this state,' according to the true meaning of the statute, and the contention is supported by the argument that it would be unreasonable to tax money found upon the person of a non-resident who died while traveling in this state. We should hesitate before applying the statute to any property casually brought into the state for a temporary purpose, as by a visitor or traveler, but the record before us does not present such a case. It might well be held that such property, although literally 'within this state,' was not here in the sense meant by the statute, on account of the transitory and accidental character of its presence and the immediate custody of the owner (*Herron, Treasurer*, v. *Keeran*, 59 Ind. 472, 476.) Where, however, the money of a non-resident is invested in this state, as it was by Mr. Romaine in the bond and mortgage in question, and in the deposits made by him in the savings banks, or where the property of a non-resident is habitually kept, even for safety, in this state, we think that the statute applies both in the letter and spirit."

Upon the authority of these two last cases Surrogate Fitzgerald decided in the *Matter of Leopold*, 35 Misc. Rep. 370 (N. Y.), that a deposit of $100,000 made by a non-resident testator in New York City, three days prior to his death, was not liable to a transfer tax. The deposit there was for the purpose of purchasing shares of stock in the Continental Tobacco Company, a corporation organized under the laws of New Jersey, but which in fact was financed in New York.

The Leopold case was cited by Surrogate Fitzgerald in deciding that Mr. Blackstone's estate should pay no transfer tax in New York (fol. 113). He could see no difference in principle between the two cases (fol. 113), and we have been equally unable to establish any substantial distinction.

Viewing the facts shown in the present record in the light of the authorities quoted under this head, we think that Surrogate Fitzgerald's conclusion commends itself as consonant both with law and justice. It is true that the account with the trust company was left open for fourteen months before Mr. Blackstone's death, while the Leopold deposit was in New York only three days before the testator died, but the proof is clear and entirely uncontradicted that Mr. Blackstone's failure to withdraw the deposit from the trust company was due solely to continuously incapacitating ill-health, and that this malady increased steadily from March, 1899, until it resulted in his death in May, 1900. It was his expressed intention to leave the proceeds of the Chicago and Alton stock with

the trust company temporarily until they could be invested in satisfactory corporate stocks or bonds, and to keep these stocks and bonds, when purchased, at his domicile in Chicago. Shortly after the sale of the Alton stock he actually invested a portion of the proceeds in Illinois Central stock, but was prevented by his increasing ill-health from investing the remainder thereof (fol. 94). Several times he expressed the disappointment which he felt at his inability to complete such investment, and said that this inability was resulting in great pecuniary loss to him. It will further be noticed that his energies were devoted to investing the proceeds of the stock which he held as trustee under the Norton will and that he succeeded in completing such investment by August 10, 1899 (fol. 94). This was his last effort. Now whether the period of incapacity lasted for three days or three years seems immaterial. The temporary character of the situation of the indebtedness in the State, and the fixed purpose to remove it at the earliest practicable time, a purpose which was only frustrated by death, constitute the controlling facts. So there was clearly "the intention and purpose to remove it within a reasonable time," which the Court of Appeals for the Ninth Circuit declared to be necessary in order to constitute property *in transitu* (*State Trust Co.* v. *Chehalis County*, 48 U. S. App. 190, 202, 1897).

Nor was the fund in question circumstanced like the property involved in the *Matter of Romaine*, *supra*. The deposit in the trust company was in no sense

"invested" in New York, nor was it "habitually kept" there. On the contrary, it was remaining there awaiting investment, and would have been promptly removed had the owner possessed the strength. Mr. Blackstone, in effect, said to the trust company, when it bought his stock for the syndicate: "I will collect these proceeds as soon as possible. Keep them for me until I am able." Suppose he had come to New York on March 31, 1899, delivered his stock to the trust company, received its check for the price, been taken ill at a hotel there and detained there by such illness until his death, could it be said that the uncollected deposit or the trust company's unpresented check therefor, would have been taxable in this State? If his illness had continued for a year instead of a day, would the legal aspect have been changed?

It will not be forgotten that in attempting to assess the property of a non-resident the burden is upon the taxing authority to establish the jurisdictional conditions (*Corn* v. *Cameron*, 19 Mo. App. 573). As was said by Ruger, Ch. J., in *McLean* v. *Jephson*, 123 N. Y. 142, 151, the "authority to assess depended upon the fact that he (the non-resident) was engaged in business, and not upon appearances which might be deceptive and uncertain."

POINT III.

A CONSTRUCTION OF THE STATUTE WHICH PERMITS DOUBLE TAXATION, SHOULD BE AVOIDED.

The general attitude of the courts upon this question has thus been described by a recent commentator:

> "The Courts also will do their utmost to prevent double taxation, and will construe a taxation statute so as to avoid such a result, and sometimes even in opposition to the plain words of the statute itself."
>
> 2 Cook on Corp. § 567.

This view finds support in the following language of Chief Justice Waite:

> " Double taxation is, however, never to be presumed. Justice requires that the burdens of government shall as far as is practicable be laid equally on all, and, if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes falls on the same person. Sometimes tax laws have that effect; but if they do, it is because the legislature has unmistakably so enacted. All presumptions are against such an imposition."
>
> *Tennessee* v. *Whitworth*, 117 U. S. 129, 137.

As characterized by Earl, Ch. J., in *People ex. rel. Savings Bank* v. *Coleman*, 135 N. Y. 231, 235, double taxation is " against public policy, the purpose of the laws and natural justice;" and he added " if that had been attempted, some way would have been found to defeat it."

In the well-known case of *People ex rel. Hoyt* v. *Commissioners*, 23 N. Y. 224, Chief Judge Comstock considered the maxim *mobilia personam sequuntur* in its

relation to taxation. "The proper use of legal fictions," he says, "is to prevent injustice, according to the maxim '*in fictione juris semper æquitas existat*,'" and deduced the conclusion that in case of movables, there is no room in a well adjusted system of taxation for the fiction that they follow the domicile of the owner.

> "In such a system," he continues, "*a fundamental requisite is that it be harmonious.* But harmony does not exist unless the taxing power is exerted with reference *exclusively either* to the *situs* of the property, *or* to the residence of the owner. *Both rules cannot obtain unless we impute inconsistency to the law, and oppression to the taxing power.* Whichever of these rules is the true one, whichever we find to be founded in justice and in the reason of the thing, it necessarily excludes the other; because we ought to suppose, indeed we are bound to assume, that other States and Governments have adopted the same rule. If then proceeding on the true principles of taxation, we subject to its burdens all goods and chattels actually within our jurisdiction, without regard to the owner's domicile, it must be understood that the same rule prevails everywhere. If we also proceed on the opposite rule, and impose the tax on account of the domicile, without regard to the actual *situs*, while the same property is taxed in another sovereignty by reason of its *situs* there, we necessarily subject the citizen to a double burden of taxation. For this no sound reason can be given." * * *
>
> "The statute means one thing or the other. It cannot have double and inconsistent interpretations. And as this is impossible so we cannot, under and according to the statute, tax the citizen of Massachusetts in respect to his chattels here, and at the same time tax the citizen of New York in respect to his chattels having an actual *situs*

there. In both cases the property must be 'within this State,' or there is no right to tax it at all" (23 N. Y. 228–9, 230).

The Court of Appeals' decision in the present case is, we submit, a violation of that "fundamental requisite" of harmony prescribed by Chief Judge Comstock, and gives the statute "the double and inconsistent interpretations" he so forcibly condemns. The proof in this case shows (fol. 96) what the New York courts (*Matter of Dingham*, 66 App. Div. 228) and statutes (3 Revised Statutes, Birdseye's Third Edition, p. 3526, sub. 5) expressly declare, that where residents of New York die leaving deposits to their credit in banks of other states, these deposits are appraised and taxed under the Transfer Tax law. It would be manifestly unjust and "impossible," in taxing citizens of other states, to adopt the contrary theory and hold that the doctrine of *mobilia personam sequuntur* did not apply.

In a later case the same court showed its strong disinclination to encourage even the possibility of double taxation. Two resident testamentary trustees of a New York testator were assessed there for personal taxes. The securities constituting the trust estate were in the actual custody of a third trustee who, together with the beneficiaries, resided in New Jersey. It was contended by the municipal authorities that the relators were liable under § 2 of the Tax Law, *supra*, defining "personal property" to include among other things "debts and obligations for the payment of money due or owing to persons residing within this state however secured or *wherever* * * *held*." But the Court dismissed

the claim, saying through Mr. Justice Peckham, who was then on that bench:

> "The contention of the counsel for the tax commissioners would render property liable to double, or even treble, or still greater taxation, if the laws of other states were like ours and there were three or more trustees living in as many different states. The statute as it is may lead to injustice in the double taxation of personal property, once to its absolute owner in this state, and again in the hands of his agents in the shape of securities in their custody and control in other states. It is not for courts to widen the possible injustice which may be perpetrated under a statute, by giving it a construction not only not called for by its language, but forced and unnatural under the circumstances. * * * We think that it plainly appears that the construction adopted by the learned General Term may lead to such a perversion of justice that no court ought to adopt it, unless constrained by the plainest language of the statute. We are of the opinion that such is not the language of this one."
>
> *People ex rel. Darrow* v. *Coleman*, 119 N. Y. 137, 140, 141.

There has been no hesitation in applying these principles to the working of the inheritance tax. Thus, in the *Matter of Enston*, *supra*, Andrews, J., said regarding the law of 1885:

> "Still further, if a succession tax is demanded and paid here upon the property of a non-resident decedent, that does not answer a claim for a further tax at the place of the decedent's domicile; and thus his estate might, and many times would be, subjected to a double succession tax. There is, in the State of Pennsylvania, a law for

> the taxation of collateral inheritances like that which exists here, and if this estate be subjected to this tax in this state, it may again be subjected to a like tax in that state. All these considerations should lead us to hesitate to put upon section 1 such a construction as would bring within its purview the property of a non-resident decedent left in this state at his death. Upon some of the questions here discussed, the case of Orcutt's Appeal (97 Penn. St. 179), is an instructive authority" (113 N. Y. 182, 183).

In the *Matter of James*, 144 N. Y. 6, the law of 1887 was under review, and the Court adopted the same principle:

> "To this view we are all the more disposed because to hold otherwise might be to subject this estate to taxation both in Great Britain and in this State. Such a result of a double taxation is one which the Courts should incline to avoid; whenever it is possible, within reason, to do so" (Gray, J., 144 N. Y. 11).

See also, the dissenting opinion of Haight, J., in *Matter of Romaine, supra* (127 N. Y., 80, 91).

It will be noticed that the general judicial disposition thus manifested to avoid double taxation upon the same property, is founded on considerations arising *ex debito justitiae* rather than *ex comitate*, but going beyond these, the late Judge Cooley, in his work on taxation, advances an important distinction between merely taxing the same property twice, and taxing the same property twice *to the same person*. The former is admittedly unjust, and every intendment will be against it; yet it will be tolerated, if no escape can be found. This is based upon the *argumentum ex necessitate*. Tax sys-

tems are not perfect, and sporadic inequality and injustice may be unavoidable evils. Instances of this form of double taxation are taxing both a corporation and the holders of its stock; taxing the mortgagor on the land and the mortgagee on the debt; taxing any property sold on credit to the vendee at its full value, and to the vendor on the amount of unpaid purchase money; and in cases where the taxpayer removes to another taxing jurisdiction with a different date for the levy. But the second form of double taxation Judge Cooley deems to be inherently unconstitutional. This distinction will best be illustrated by quoting his own language:

> "It has been remarked on a preceding page, that, when personal property is taxed, duplicate taxation is sometimes imposed. By this was meant that such property sometimes, after being subjected to one levy for the support of government for the current year, is by a change of circumstances subjected to taxation a second time for the support of government during the same period" (p. 219). * * *
>
> "There is also sometimes what seems to be a double taxation of the same property to two individuals; as where the purchaser of property on credit is taxed on its full value, while the seller is taxed to the same amount on the debt" (p. 220). * * *
>
> "There is a sense, however, in which duplicate taxation may be understood—and which we think is the proper sense—which would render it wholly inadmissible under any constitution requiring equality and uniformity in taxation. By duplicate taxation in this sense is understood *the requirement that one person or any one subject*

of taxation shall directly contribute twice to the same burden, while other subjects of taxation belonging to the same class are required to contribute but once" (p. 225). * * *

"It is a fundamental maxim in taxation that the same property shall not be subject to a double tax payable by the same party, either directly or indirectly; and where it is once decided that any kind or class of property is liable to be taxed under one provision of the statutes, it has been held to follow, as a legal conclusion, that the legislature could not have intended that the same property should be subject to another tax, though there may be general words in the law which would seem to imply that it may be taxed a second time" (p. 227).

A recent decision of the Supreme Court of Michigan supplies an instructive instance of this doctrine (*Detroit Citizens Street Railway Company* v. *Common Council*, 125 Mich. 673). It was there held (p. 694) that the double taxation of the property of the same corporation was inherently unconstitutional and void.

Still further beyond the foregoing considerations is the logical impossibility of two taxes in different states on a subject, namely, the right to transmit property, which is conferred by only one of the states. To say that the State of New York may tax a privilege granted by the State of Illinois, and after the latter state has laid its own burdens on the privilege, seems to us to advocate a form of double taxation, which is not only unjust, but is also a contradiction in terms. This argument, however, will be considered under the next head of this brief.

POINT IV.

AS SUCCESSION, INHERITANCE AND TRANSFER TAXES IN THE UNITED STATES ARE LEVIED UPON THE POWER TO TRANSMIT THE TITLE TO PROPERTY, AND NOT UPON THE PROPERTY ITSELF, THE STATE OF NEW YORK WAS WITHOUT JURISDICTION IN THIS CASE TO TAX THE EXERCISE OF A POWER WHICH IT DID NOT CREATE AND COULD NOT TAKE AWAY.

That the thing taxed is the right to transmit the title to property, seems to be settled beyond dispute.

I. It has been determined in this Court with respect severally

(1) to the Federal legacy tax:

Knowlton v. *Moore*, 178 U. S. 41.
Eidman v. *Martinez*, 184 U. S. 578, 589.
Moore v. *Ruckgaber*, 184 U. S. 593, 596.

(2) to the New York transfer tax:

United States v. *Perkins*, 163 U. S. 625.
Plummer v. *Coler*, 178 U. S. 115.
Orr v. *Gilman*, 183 U. S. 278, 289.

(3) to the Illinois inheritance tax:

Magoun v. *Illinois Trust and Savings Bank*, 170 U. S. 283, 288.

In *United States* v. *Perkins*, *supra*, Mr. Justice Brown explained the principle thus:

> "In this view, the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition

that the State has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee" (163 U. S. 628).

"We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it" (163 U. S. 630).

II. The New York transfer tax has been repeatedly interpreted in that way by the Court of Appeals:

Matter of Swift, 137 N. Y. 77, 88.
Matter of Merriam, 141 N. Y. 479, 484.
Matter of Hoffman, 143 N. Y. 329, 331.
Matter of Bronson, 150 N. Y. 1, 6.
Matter of Westurn, 152 N. Y. 93, 99.
Matter of Sloane, 154 N. Y. 109, 113.
Matter of Dows, 167 N. Y. 227, 232.
Matter of Pell, 171, N. Y. 48, 55.
Matter of Vanderbilt, 172 N. Y. 69, 72–4.

III. Such is also the view taken in other States.

Finnen's Estate, 196 Pa. St. 72, 75.
Minot v. *Winthrop*, 162 Mass. 113.
Kochersperger v. *Drake*, 167 Ill. 122.
Schoolfield's Executor v. *Lynchburg*, 78 Va. 366.
State v. *Dalrymple*, 70 Md. 294.

State v. *Hamlin*, 86 Me. 495.
State v. *Alston*, 94 Tenn. 674.
In re Wilmerding, 117 Cal. 281.
Gelsthorpe v. *Furnell*, 20 Montana 299.

It thus appears that the tax in question has been definitively determined to be a tax upon the power to transmit property by will, or through the operation of intestate laws. It seems difficult to understand how, as thus limited, a tax upon the power can be imposed by any other sovereignty than the one which creates the power. The transmission of Mr. Blackstone's property was effected solely by the law of Illinois (*Eidman* v. *Martinez*, *supra*, 184 U. S. 592; *Kintzing* v. *Hutchinson*, *supra*, 14 Fed. Cases 649). It may be that in some other form, or upon some other theory, the intangible personal property of a non-resident may be subject to a tax or duty. The law of Great Britain, which is hampered by no constitutional restrictions, and which has elaborated a far-reaching and complicated system of taxation, furnishes seven examples of different kinds of governmental impositions under the general head of "death duties." These are clearly differentiated, and are subject in operation to distinct rules of construction. The following, which are the most important of the seven classes, have already been reviewed by Mr. Justice White in *Knowlton* v. *Moore*, *supra*:

(1) *Probate Duty.* This is the original form of death duty and dates back to 1694. It received its name from being collected by means of a stamp impressed upon the letters testamentary

or of administration, and has been defined by Hanson to be the price paid for clothing the executor with the right to take possession of the personal estate of the decedent. It follows "that it is only payable in respect of personal property within the jurisdiction of the Court by which the grant is made and from which, therefore, the authority of the executor emanates."

Hanson's Death Duties, 4th ed., 1, 2.

As it was expressed by the Court of Appeals, "Probate duty attaches to bona notabilia in the place where the goods are situate, wholly irrespective of the question of the domicil of the testator."

Laidlay v. *The Lord Advocate*, L. R. 15 App. Cases, 468, 483.

This duty now applies only to decedents who died before August 2, 1894, and is substantially superseded by the estate duty, established by the Finance Act of 1894 (Norman's Digest of the Death Duties, 2d Ed. Introd., p. 1).

(2) *Legacy Duty.* This like probate duty is confined to personal property, but it differs from probate duty by looking to domicil and not to jurisdiction, and is controlled by the doctrine that *mobilia personam sequuntur.* Originally a mere stamp duty on the receipt given by the legatee or next-of-kin, it became in 1796 and still remains a duty on the property actually given to or devolving upon the legatee or next-of-kin.

Hanson's Death Duties, pp. 19, 20.

(3) *Succession Duty.* This "is a tax placed upon the gratuitous acquisition of property which passes on the death of any person by means of a transfer (called either a disposition or devolution) from one person (called the predecessor) to another person (called the successor)" (Hanson, p. 40). It covers both real and personal property, with the limitation that the personal property is not subject to the legacy duty. It does not cover personal property, tangible or intangible, situated in Great Britain, but belonging to a non-resident decedent.

Wallace v. *The Attorney General*, L. R. 1 Ch. App. 1.

Attorney General v. *Campbell*, L. R. 5 H. L. 524, 529.

With respect to these two still active duties, which resemble our succession taxes, Mr. Dicey in his *Conflict of Laws* (edition of 1897, with Moore's American Notes), enunciates the following "general principle" and "rules":

"Legacy duty and succession duty are imposed on that movable property, and on that movable property only, which the legatee, distributee, or to use a more general term, the successor, claims under, or by virtue of British law. (p. 785–6).

"RULE 1. The movable property of a deceased person who has not died domiciled in the United Kingdom is, wherever locally situate, not liable to legacy duty. (p. 788).

"RULE 2. The movable property of a deceased person who has died domiciled in the United Kingdom is, wherever locally situate, liable to legacy duty. (p. 788).

"RULE 3. Movable property wherever situate which a successor claims under a will, or under the intestacy of a deceased person dying domiciled out of the United Kingdom, is not liable to succession duty. (p. 789).

"RULE 4. Movable property wherever actually situate, which a successor claims under a will or other instrument executed by a person dying domiciled in the United Kingdom, is (in general) liable to succession duty (?)." (p. 789).

(4) *Estate Duty.* This was added to the law by the Finance Act of 1894. "What it taxes is not the interest to which some person succeeded on a death, but the interest which ceased by reason of the death." (Hanson, 63; Norman's Digest, 184, 513).

Hence it is the most far-reaching of all so-called death duties. "It is leviable in respect of all property, both real and personal, of which the deceased could dispose, or in which an interest shifted by reason of his death" (Hanson, p. 63). In the case of a resident it attaches to all his personal property wherever situated, and in the case of a non-resident will be leviable on all his property, whether real or personal, situated in Great Britain. Whether in the case of a non-resident the estate duty would not under some circumstances be a tax upon property and not upon a change in the status or ownership of the property, it is not necessary now to consider. In practice, however, ancillary probate or administration is a pre-requisite to obtaining possession

> of or collecting personal property belonging to a non-resident. Hence in this respect estate duty is akin to probate duty, and may be regarded, unlike any succession tax in this country, as a charge for empowering the executor or administrator to reduce such property to possession.

Even under the present New York law, which is in terms a tax upon the transfer of title, doubt as to its precise nature has occasionally suggested itself to the courts of that State.

Thus in the *Matter of McPherson*, 104 N. Y. 306, 317, where the constitutionality of the first inheritance tax act of 1885 was under consideration, the Court through Earl, J., said (p. 306):

> "It is not very important to determine in this case whether the act of 1885 is to be regarded as imposing a tax upon property or upon the succession or devolution of property by will or intestacy. In either case it is a special tax. In the one case it is a tax upon the particular class of property, and in the other case a tax upon the succession or devolution of property, or the right to receive property in the cases mentioned in the statute. Whether it be one or the other it is free from constitutional objection. * * * Taxes of a similar character were quite extensively imposed by the acts of Congress passed during the late civil war. If this be regarded as a tax upon property, then it is free from constitutional objection if it be equally imposed and properly apportioned upon all the property of the class to which it belongs."

In the *Matter of Swift*, 137, N. Y., Gray, J., was of

the opinion that so far as the personal property of a non-resident was concerned, the tax was one upon the property and not upon the succession. A majority of the court, however, did not agree with this opinion (p. 88). Again, in the *Matter of James*, 144 N. Y. 6, Gray, J. in speaking for the court uses language which seems to point to this same conclusion.

In *Matter of Pell*, 60 App. Div. 286, the Appellate Division in the First Department distinctly held that the amendment by chapter 76 of the laws of 1899, imposing a tax upon remainders and reversions which vested prior to June 30, 1885, was a tax upon property and not upon the right of succession, and was constitutional. The court was of the opinion that viewed as a tax upon succession such an imposition would be unconstitutional as in violation of rights which had vested before the adoption of any inheritance tax legislation. In reversing the Appellate Division and holding the tax to be unconstitutional, the Court of Appeals adhered to its previous decisions that the tax was upon the succession, and added that even if viewed as a tax on property the amendment of 1899 would still be unconstitutional. (171 N. Y. 48). The possible limitations of the succession tax theory where non-residents' estates were concerned, may have been in the mind of the Supreme Court of Massachusetts in passing upon the validity of the inheritance tax law of 1891, which provided "that all property within the jurisdiction of the Commonwealth, and any interest therein, whether belonging to inhabitants of the Commonwealth or not,

and whether tangible or intangible, which shall pass by will or by the laws of the Commonwealth regulating intestate succession," etc., should be subject to a tax. Thus in the opinion the court said:

> "But the right or privilege taxed can perhaps be regarded either as the right or privilege of the owner of property to transmit it on his death, by will or descent, to certain persons, or as the right or privilege of these persons to receive the property. *The tax too has some of the characteristics of a duty on the administration of the estate of deceased persons.*" (*Minot* v. *Winthrop*, *supra*, 162 Mass. 124).

This last sentence was quoted with approval in *Frothingham* v. *Shaw*, 175 Mass. 59, 61, where the question involved was the power of levying an inheritance tax upon bonds and stock of foreign corporations, a certificate of indebtedness of a foreign corporation, bonds secured by mortgage on New Hampshire land and cash on deposit with a savings bank and with individuals in Brooklyn. This property belonged to a Massachusett's testator and letters testamentary were issued to the executor thereof in that State. Under those letters the executors took possession of all the property; and there had been no administration in New York. It was determined that this property was "within the jurisdiction of the Commonwealth," as required by the act of 1891, and that the succession took place under the Massachusetts law. In the course of the opinion, Morton, J., said:

> "Moreover, it is to be observed, if that is material, that there has been no administration

> in New York, that the executor was appointed here, and has taken possession of the property by virtue of such appointment and must distribute it and account for it according to the decrees of the courts of this Commonwealth. To say, therefore, that the succession has taken place by virtue of the law of New York would be no less a fiction than the petitioners insist that the maxim *mobilia sequuntur personam* is when applied to matters of taxation" (175 Mass. 63).

Treating the converse state of facts and holding that intangible personal property belonging to a non-resident of New York but alleged to have a *situs* in that state, was not subject to its transfer tax law, Barrett, J., has spoken with equal emphasis in the Appellate Division opinion in the Houdayer case, from which we have already quoted:

> "As to residents, the tax has been repeatedly held to be a tax upon the right of succession under a will, or by devolution, in case of intestacy (*Matter of Swift*, 137 N. Y. 77; *Matter of Merriam*, 141 *id.* 484). This precise rule has never yet been extended in terms to non-resident decedents, and that question is an open one, unless indeed, the general rule which the Court of Appeals laid down in the Swift and Merriam cases was intended to cover non-resident as well as resident decedents. There would certainly seem to be a distinction between the two classes. In the case of residents, the right of succession or devolution is given by the State which imposes the tax. That State may limit the right as it pleases. Consequently it was held in the Merriam case, that, assuming that the legacy there in question vested 'at the moment of testator's death, yet in contemplation of law the tax was fixed on the succession at the

same instant of time.' Can this be said where the estate or legacy vests under the laws of a foreign State? Does not the person in whom the estate vests and who comes to this State to secure possession of property of the decedent situated here, so come possessed of the legal title to such property? The right of succession is not conferred upon him by the laws of this State, but by the laws of the State where the decedent resided and died. It would seem, therefore, that as against such a person the tax, however it may be obscured or styled, is essentially a tax upon property within our jurisdiction, and not upon the right of succession thereto. If it is upon the right of succession, then plainly it is a tax upon a right granted by a foreign State. If it is not a tax upon such right, then it is simply a tax upon property acquired through the instrumentality of a foreign succession law. And that in substance is what it is. In common parlance it is a succession tax. But in legal parlance it is, as was intimated in the *Matter of James* (144 N. Y. 10), 'a tax upon property in this State passing from non-resident decedents.' The latter case distinctly holds that 'it is the property of the decedent which is sought to be subjected to the tax'; and that 'the right of the State to impose the tax is based upon its dominion over what property is situated within its territory'" (3 App. Div., N. Y. 478–9).

This Court has recently said that "the power of the legislature to tax the personal property of non-residents, both tangible and intangible," is well established, has cited *Mager* v. *Grima*, 8 How. 490, in support of that conclusion (*Eidman* v. *Martinez*, 184 N. Y. 578, 582), and has added that the real question is whether any particular legislative act expresses such an intent. In

the Mager case it was held that the State of Louisiana might impose a tax of ten per cent. of the value of any property passing under the Louisiana laws to any *alien* heir, legatee or donee. This case, it will be noted, involved a tax on property passing to an alien, and the principal reason assigned by the Court for upholding the law was that as the state could escheat the entire property of an alien, it could retain a part of such property by way of tax. This reasoning surely is not applicable to property passing to a citizen of another State of the Union. Some of the language of Chief-Justice Taney's opinion was more general, but, we submit, the thing decided was not what is now under consideration. In *Eidman* v. *Martinez*, the question again involved a tax on legacies to aliens. The Louisiana statute of 1842 (Act No. 154, § 4) construed in the Mager case, was limited to a tax of ten per cent. on successions passing to aliens. It is still in force as article 1221 of the Revised Civil Code of 1900, and seems to be the only form of succession tax then or now imposed in that state. Successions passing to citizens of another state could not, of course, have been subjected to any such duty.

There are, however, other significant features presented by *Eidman* v. *Martinez*. That case, it will be remembered, determined that the War Revenue Act of 1898 did not impose a legacy tax upon federal, municipal and corporate bonds belonging to a non-resident alien, which at the time of his death, were in the custody of his agent in New York, and which passed partly by

his will and partly by the interstate laws of Spain to his son, also a non-resident alien. Ancillary administration was taken out in New York and possession of the bonds obtained. In the course of the opinion Mr. Justice Brown, in discussing the principle *mobilia personam sequuntur*, said:

> "While the enormous increase in the amount and variety of personal property during the past century has necessitated certain limitations of the maxim, particularly in matters of taxation, it is by no means obsolete. It is still the law that personal property is sold, transmitted, bequeathed by will, and is descendible by inheritance according to the law of the domicil and not by that of its *situs* (*Cross* v. *United States Trust Co.*, 131 N. Y. 330; *Ennis* v. *Smith*, 14 How. 400, 424; *Dammert* v. *Osborn*, 141 N. Y. 564). In matters of taxation, however, and of subjecting the personal property of non-residents to the claims of local creditors of the owner, serious encroachments have been made upon the ancient maxim, and a rule has grown up in modern times that legislatures may deal with the personal as well as with the real property of non-residents within their jurisdiction; and that such property, while enjoying the protection and benefits of the local law, may be taxed for the expenses of the local government. These doctrines have found expression in a large number of cases in this court (*Green* v. *Van Buskirk*, 5 Wall. 307; *S. C.*, 7 Wall 139; *Hervey* v. *Rhode Island Locomotive Works*, 93 U. S. 664; *Walworth* v. *Harris*, 129 U. S. 355; *Security Trust Company* v. *Dodd*, 173 U. S. 624), and cases there cited" (184 U. S. 581–2). * * *
>
> "The tax in question in this case not being upon the property itself, but upon the succession (*United States* v. *Perkins*, 163 U. S. 625; *Magoun*

v. *Illinois Trust & Savings Co.*, 170 U. S. 283; *Knowlton* v. *Moore*, 178 U. S. 41), laws imposing general taxes on real and personal property are not controlling when applied to taxes upon the succession, when such succession takes place and is governed by the laws of a foreign country. The actual *situs* of the property in such cases cuts but a small figure, while in the case of general taxes upon such property it is now considered determinative of the whole question" (184 U. S. 589). * * *

"We do not enforce the law of Spain in this case because it is our law, but because the practice of all civilized nations is to recognize the law of the domicil as governing the transmission and inheritance of personal property, and to prevent the confusion that would follow, if estates, situated possibly in half a dozen countries, were administered and distributed according to the laws of each country in which any portion of such estate happened to be located. We decline to hold the tax involved in this case applicable to this estate because the words of the statute do not require it, and because the thing taxed, that is, the transmission of the property to the legatees or next of kin, takes place in a foreign country" (184 U. S. 591, 592).

POINT V.

WHERE ANY DOUBT EXISTS AS TO LIABILITY TO A SUCCESSION TAX, THE DOUBT SHOULD BE RESOLVED IN FAVOR OF THE PERSON SOUGHT TO BE TAXED.

For the purpose of sustaining the State's right to tax the succession to Mr. Blackstone's property, both the Court of Appeals and the Appellate Division of the Supreme Court adopted the broadest construction of the

New York Tax Law. In so doing we believe that they not only did an injustice to his legatees, but also violated the long established rule that special tax legislation, which the transfer tax law has been declared repeatedly to be (*Matter of Enston*, 113 N. Y. 174, 177; *Matter of James*, 144 N. Y. 6, 13; *Matter of Harbeck*, 161 N. Y. 211, 218), must be strictly construed.

In its most recent discussion of the subject this Court has stated our proposition thus:

> "It is an old and familiar rule of the English courts, applicable to all forms of taxation, and particularly special taxes, that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that a liberal construction be given to words of *exception* confining the operation of duty (*Warrington* v. *Furbor*, 8 East 242, 247; *Williams* v. *Sangar*, 10 East 66, 69; *Denn* v. *Diamond*, 4 B. & C. 243, 245; *Tomkins* v. *Ashby*, 6 B. & C. 541; *Doe* v. *Snaith*, 8 Bing. 146, 152; *Wroughton* v. *Turtle*, 11 M. & W. 561, 567; *Gurr* v. *Scudds*, 11 Exchq. 190), though the rule regarding *exemptions* from general laws imposing taxes may be different; Cooley on Taxation, 146; In *Matter of Enston*, 113 N. Y. 174, 177.
>
> "We have ourselves had repeated occasion to hold that the customs revenue laws should be liberally interpreted in favor of the importer, and that the intent of Congress to impose or increase a tax upon imports should be expressed in clear and unambiguous language. (*Hartranft* v. *Wiegmann*, 121 U. S. 609; *American Net & Twine Co.* v. *Worthington*, 141 U. S. 468; *United States* v. *Wigglesworth*, 2 Story 369; *Powers* v. *Barney*, 5 Blatchford 202)."
>
> *Eidman* v. *Martinez*, *supra*, 184 U. S. 578, 583.

The language of Justice Story in the case cited from his reports is as follows:

> "My reasons for this conclusion are these: In the first place, it is, as I conceive, a general rule in the interpretation of all Statutes, levying taxes or duties upon subjects or citizens, not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing upon a close analogy. In every case, therefore, of doubt, such Statutes are construed most strongly against the Government, and in favor of the subjects or citizens, because burthens are not to be imposed, nor presumed to be imposed, beyond what the Statutes expressly and clearly import. Revenue Statutes are in no just sense either remedial laws, or laws founded upon any permanent public policy, and, therefore, are not to be liberally construed."
>
> *United States* v. *Wigglesworth*, 2 Story 369, 373, 374.

In the *Matter of Enston*, Judge Andrews said:

> "The tax imposed by this act is not a common burden upon all the property or upon the people within the state. It is not a general but a special tax, reaching only to special cases and affecting only a special class of persons. The executors in this case do not, therefore, in any proper sense, claim exemption from a general tax or a common burden. Their claim is that there is no law which imposes such a tax upon the property in their hands as executors. If they were seeking to escape from general taxation, or to be exempted from a common burden imposed upon the People of the state generally, then the authorities cited by the learned counsel for the People, to the effect that an exemption thus claimed must be

> clearly made out, would be applicable. But the executors come into court claiming that the special taxation provided for in the law of 1885 is not applicable to them, or the property which they represent. In such a case they have the right, both in reason and in justice, to claim that they shall be clearly brought within the terms of the law before they shall be subjected to its burdens. It is a well established rule that a citizen cannot be subjected to special burdens without the clear warrant of the law" (113 N. Y. 174, 177, 178).

This conclusion was cited with approval in the *Matter of Bronson*, 150 N. Y. 6, and *Matter of Harbeck*, 161 N. Y. 218, and to the same effect are *Matter of Vassar*, 127 N. Y. 1, 12, *Matter of Stewart*, 131 N. Y. 274, 282, and *Matter of Fayerweather*, 143 N. Y. 114.

In the last cited case, Peckham, J., said:

> "I think it would be a most narrow and unreasonable construction of those words to hold that they do not include a case like this. If there were a doubt upon the question it should be resolved in favor of the taxpayer as represented by the executors and against the taxing power" (143 N. Y. 119).

United States v. *Isham*, 17 Wall. 496, 504, and *Ruckgaber* v. *Moore*, 104 Fed. Rep. 947, 951, illustrate the same salutary doctrine. There is certainly no necessary inference from the words of the New York statute, "property within the State," that intangible personal property, belonging to a non-resident, should be taxed. Neither in 1892, when this language was first embodied in the transfer tax law (ch. 399, New York Laws of 1892), nor in June, 1896, when the tax law was codified in its

present form (ch. 908, Laws of 1896), had it ever been held in this country, so far as our investigation reveals, that the devolution or taxation of intangible personal property was to be governed by any other law than that of the owner's domicile. On the contrary the maxim *mobilia personam sequuntur* may be said to have been of universal application in such cases. And even when in October, 1896, the New York Court of Appeals decided in the *Matter of Houdayer*, that a deposit in a New York trust company belonging to a non-resident was liable to the transfer tax, the decision was explicitly founded upon the assumption that such a deposit was for all practical purposes money, or, in other words, localized and tangible property. Hence it seems to us impossible to predicate of the laws of 1892 and 1896 an intention to tax a non-resident's intangible personalty. Nevertheless even if such an intention were arguable, we should be met by the principle of statutory interpretation which was expressed by the late Justice Strong in these words:

> "But, notwithstanding the generality of the statutory words, they must, I think, receive a reasonable construction, in harmony with the construction usually given to such statutes, and consistent with the legislative power of the state."
>
> (*Kintzing* v. *Hutchinson*, 14 Fed. Cases 647).

In a word, we cannot do better than adopt in the present case this significant summary of the situation in a recent Massachusetts case:

> "State inheritance tax laws are apt to aim at

> seizing all that they can get without regard to consistency of principle, but when it is possible to interpret them to mean what is just, we must do so."
>
> *Holmes, C. J.*, 176 Mass. 190, 191.

Two of the most recent of the New York cases on the subject, *Matter of Vanderbilt*, 172 N. Y. 69, and *Matter of Brez*, 172 N. Y. Memo., with their vigorous dissents, supply what may be deemed both examples and warnings of Mr. Justice Holmes' epitome of the present legislative tendency and of the judicial ideal in relation thereto.

POINT VI.

THE TAXATION IN THIS PROCEEDING OF THE DEBTS DUE MR. BLACKSTONE FROM RESIDENTS OF NEW YORK, WOULD BE UNCONSTITUTIONAL.

In her notice of appearance in this proceeding, in her affidavit in answer to the petition of the Comptroller, and in her notice of appeal to the Surrogates, the plaintiff in error objected to the imposition of any tax, on the ground that it would be in contravention of various specific constitutional prohibitions.

In the preceding argument we have endeavored to show what jurisprudential considerations are involved in the determination of this case. In the light of these considerations we desire now to discuss the constitutional prohibitions which we have invoked. But before taking up these prohibitions separately, it seems

necessary to treat the constitutionality of the New York transfer tax law as interpreted by the judgment of the Court of Appeals, somewhat in mass. The six independent constitutional guaranties upon which we rely interpenetrate each other. We believe that all of these have been violated in the present case; but, in actual analysis, it is not always easy to define the precise limit of each separate infraction. With respect particularly to the fourteenth amendment of the constitution, this Court has not yet deemed it necessary to classify positively the tests of lawful state legislation. There are, however, certain underlying principles of right which the instrument is conceded to protect, and which may perhaps be denominated as within its implication, as distinguished from its expression. To these we shall briefly refer.

In one of the earliest cases in which the application of the constitution to the conflicting claims of citizens of different states was attempted, Mr. Justice Patterson, sitting in the Circuit Court, said with reference to a territorial controversy between claimants under the laws of Pennsylvania and Connecticut:

> "From these passages" (from the bill of rights and constitution of Pennsylvania) "it is evident; that the right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man. Men have a sense of property: Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects that induced them to unite in society. No man would become a member of a

> community in which he could not enjoy the fruits of his honest labour and industry. The preservation of property, then, is a primary object of the social compact, and, by the late Constitution of Pennsylvania, was made a fundamental law."
>
> *Vanhorne's Lessee* v. *Dorrance*, 2 Dallas 304, 310 (1795).

Three years later this Court had under consideration the power of the legislature of Connecticut to pass an act granting a new hearing in a probate case after the right to appeal from the probate decree had expired, and in the course of the opinion Chase, J., said:

> "The purposes for which men enter into society will determine the nature and terms of the social compact; and as they are the foundation of the legislative power, they will decide what are the proper objects of it: The nature, and ends of legislative power will limit the exercise of it. This fundamental principle flows from the very nature of our free Republican governments, that no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit. There are acts which the Federal, or State, Legislature cannot do, without exceeding their authority. There are certain vital principles in our free Republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty, or private property, for the protection whereof the government was established. An act of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority."
>
> *Calder* v. *Bull*, 3 Dallas 386, 388 (1798).

In *St. Louis* v. *Ferry Co.*, 11 Wall. 423 (1870), the right to tax in Missouri ferry boats belonging to an Illinois corporation and only temporarily in Missouri, was denied on the general ground that the jurisdiction to tax was absent. The only specific constitutional objection raised by the ferry company, namely, that the tax was unlawful as a tonnage duty, was not considered by the Court (11 Wall. 432). We quote as follows from page 430:

> "Where there is jurisdiction neither as to person nor property, the imposition of a tax would be *ultra vires* and void. If the legislature of a State should enact that the citizens of property of another State or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action." (11 Wall. 430).

So in The Delaware Railroad Tax Case, 18 Wall. 206, 229, Field, J., said:

> "We proceed, therefore, to the second objection to the act, that it imposes taxes upon property beyond the jurisdiction of the State. If such be the fact the tax to that extent is invalid, for the power of taxation of every State is necessarily confined to subjects within its jurisdiction."

These decisions manifestly proceed upon the theory which Mr. Justice Miller has described in *Ex Parte Yarborough*, 110 U. S. 651, 658 (1884), namely that

"in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing (is), that which is implied is as much a part of the instrument as what is expressed." So, in disapproving the rule of the New York and New Jersey courts, and holding that a grant of letters of administration upon the estate of a living person was void, the Court through Mr. Justice Gray said:

> "The Fourteenth Article of Amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains, 'nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the State, whether through its legislative, its executive or its judicial authorities. (*Virginia* v. *Rives*, 100 U. S., 313, 318, 319; *Ex parte Virginia*, 100 U. S. 339, 346; *Neal* v. *Delaware*, 103 U. S. 370, 397."
> *Scott* v. *McNeal*, 154 U. S. 34, 45.

During the course of the dissenting opinion in *Adams Express Company* v. *Ohio*, 165 U. S. 194, Mr. Justice White, with whom concurred Mr. Justice Field, Mr. Justice Harlan and Mr. Justice Brown, enunciated certain general principles which have special application to the present case:

> "It is elementary that the taxing power of one government cannot be lawfully exerted over property not within its jurisdiction or territory and within the territory and jurisdiction of another. The attempted exercise of such power would be a clear usurpation of authority, and involve a denial of the most obvious conceptions

> of government. This rule, common to all jurisdictions, is peculiarly applicable to the several States of the Union, as they are by the Constitution confined within the orbit of their lawful authority, which they cannot transcend without destroying the legitimate powers of each other, and, therefore, without violating the Constitution of the United States" (165 U. S., 230).

To the same effect is the language of Mr. Justice Peckham in a still more recent case where the power of a State to authorize a personal judgment for taxes against a non-resident owner was denied:

> "In Cooley on Taxation, 1st ed. p. 121, it is said that 'a State can no more subject to its power a single person or a single article of property whose residence or legal *situs* is in another State, than it can subject all the citizens or all the property of such other State to its power.' These are elementary propositions, but they are referred to only for the purpose of pointing out that a statute imposing a personal liability upon a non-resident to pay such an assessment as this oversteps the sovereign power of the State."
>
> *Dewey* v. *Des Moines*, 173 U. S. 193, 204.

I. THE PROCEEDINGS UNDER REVIEW IMPAIR THE OBLIGATION OF THE CONTRACTS MADE BETWEEN MR. BLACKSTONE AND THE TRUST COMPANY AND CUYLER, MORGAN & CO., IN VIOLATION OF SECTION 10 OF ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES.

The leading case upon this point is *Railroad Company* v. *Pennsylvania*, 15 Wall. 300, usually cited as State Tax on Foreign Held Bonds. The law under review

there required every Pennsylvania corporation paying interest to its bondholders to retain a tax of five per cent. upon the interest paid and to pay this amount semi-annually to the State. The Cleveland, Painesville and Ashtabula Railroad, a corporation of Pennsylvania and Ohio, had issued various bonds, the interest on which was payable in Philadelphia or New York and which were largely held by non-residents of Pennsylvania. The Court held that these bonds followed the domicile of their respective owners; that the State of Pennsylvania had no power to tax the indebtedness, and that such taxation would impair the obligation of the contract evidenced by the bonds. In the course of its opinion the Court said:

> "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business. * * * Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form, and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction. * * *
>
> "It is undoubtedly true that the actual *situs* of personal property which has a visible and tangible existence, and not the domicile of its owner, will, in many cases, determine the State in which it may be taxed. The same thing is true of public securities consisting of State bonds and bonds of municipal bodies, and circulating notes of banking institutions; the former, by general usage, have acquired the character of, and are treated as, property in the place where they are found, though removed from the domicile of the owner;

the latter are treated and pass as money wherever they are. But other personal property, consisting of bonds, mortgages, and debts generally, has no *situs* independent of the domicile of the owner, and certainly can have none where the instruments, as in the present case, constituting the evidences of debt, are not separated from the possession of the owners. * * *

"The tax laws of Pennsylvania can have no extraterritorial operation; nor can any law of that State inconsistent with the terms of a contract, made with or payable to parties out of the State, have any effect upon the contract whilst it is in the hands of such parties or other non-residents." 15 Wall. 300, 319, 320, 323, 325, 326.

Among the many cases where these conclusions have been approved the following may be cited:

Tappan v. *Merchants' Nat. Bank*, 19 Wall. 490, 499.
Murray v. *Charleston*, 96 U. S. 432, 448.
Kirtland v. *Hotchkiss*, 100 U. S. 491, 499.
Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S. 196, 208.
Erie R. R. v. *Pennsylvania*, 153 U. S. 628, 646.
Dewey v. *Des Moines*, 173 U. S. 193, 204.
New Orleans v. *Stempel*, 175 U. S. 309, 319.
Matter of Bronson, 150 N. Y. 1, 5.
Cent. Trust Co. v. *Chat. R. & C. R.*, 68 Fed. Rep. 685, 689 (Clark, D. J., E. D. Tenn.)
Walker v. *Jack*, 60 U. S. App. 127, 128.
Goldgart v. *People*, 106 Ill. 25, 29.
Liverpool & L. & G. Ins. Co. v. *Bd. of Ass.*, 51 La. Ann. 1028 (45 L. R. A. 524).
City of Detroit v. *Lewis*, 109 Mich. 155.

As has already been shown, the Court, in *Savings Society* v. *Multnomah Co.*, *supra*, 169 U. S. 421, modified some of the language just quoted so far as it defined

the intangible quality of a real estate mortgage, and held that such a mortgage belonging to a non-resident might be taxed in the State where the mortgaged land was situated. But the general effect of the earlier decision was not limited.

In *Murray* v. *Charleston*, *supra*, the right of the defendant to enforce an ordinance levying a tax on stock issued by that city and belonging to a non-resident, was denied, saying:

> "A change of the expressed stipulations of a contract, or a relief of a debtor from strict and literal compliance with its requirements, can no more be effected by an exertion of the taxing power than it can be by the exertion of any other power of a State legislature. The constitutional provision against impairing contract obligations is a limitation upon the taxing power, as well as upon all legislation, whatever form it may assume. Indeed, attempted State taxation is the mode most frequently adopted to affect contracts contrary to the constitutional inhibition. It most frequently calls for the exercise of our supervisory power. It may, then, safely be affirmed that no State, by virtue of its taxing power, can say to a debtor, 'You need not pay to your creditor all of what you have promised to him. You may satisfy your duty to him by retaining a part for yourself, or for some municipality, or for the State treasury'" (96 U. S. 444, 445).

The point was made in the case just cited that the power of the city to tax all property within its limits was contained in its charter and that as the stock in question was bought with notice of that power, there was no impairment of the contract. While Justices

Miller and Hunt dissented on this score, the majority of the Court overruled the point, saying:

> "It has been strenuously argued on behalf of the defendant that the State of South Carolina and the city council of Charleston possessed the power of taxation when the contracts were made, that by the contracts the city did not surrender this power, that, therefore, the contracts were subject to its possible exercise, and that the city ordinances were only an exertion of it. We are told the power of a State to impose taxes upon subjects within its jurisdiction is unlimited (with some few exceptions), and that it extends to every thing that exists by its authority or is introduced by its permission. Hence it is inferred that the contracts of the city of Charleston were made with reference to this power, and in subordination to it.
>
> "All this may be admitted, but it does not meet the case of the defendant. We do not question the existence of a State power to levy taxes as claimed, nor the subordination of contracts to it, so far as it is unrestrained by constitutional limitations. But the power is not without limits, and one of its limitations is found in the clause of the Federal Constitution, that no State shall pass a law impairing the obligation of contracts." 96 U. S., 444.

See, also, Cooley on Constitutional Limitations, 5th Ed., page 603, where the author says:

> "As the States are forbidden to pass any laws impairing the obligation of contracts, they are of course precluded from levying any taxes which would have that effect. Therefore, as was shown in a previous chapter, if the State by any valid contract has obligated itself not to tax particular property, or not to tax beyond a cer-

tain rate, a tax in disregard of the obligation is void. It is also held that to tax in one State contracts owned in another impairs their obligation, even though they are made and are payable in the State imposing the tax, and are secured by mortgage in that State."

II. THE PROCEEDINGS UNDER REVIEW DENY FULL FAITH AND CREDIT TO THE PUBLIC ACTS AND JUDICIAL PROCEEDINGS OF THE STATE OF ILLINOIS, IN VIOLATION OF SECTION 1 OF ARTICLE IV OF THE CONSTITUTION.

Section 905 of the Revised Statutes, after prescribing the method of authenticating the records and judicial proceedings of the courts of another State, concludes:

> "And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from where the said records are or shall be taken."
>
> See *Hilton* v. *Guyot*, 159 U. S. 113, 181.

In construing these provisions in an early case, Chief Justice Marshall said:

> "This is precisely the same case as that of *Mills* v. *Duryee*. The court cannot distinguish the two cases. The doctrine there held was, that the judgment of a state court should have the same credit, validity, and effect, in every other court in the United States, which it had in the State where it was pronounced, and that whatever pleas would be good to a suit thereon in such State, and none others, could be pleaded in any other court in the United States."
>
> *Hampton* v. *M'Connel*, 3 Wheat. 234, 235 (1818).

In *Mills* v. *Duryee*, to which the Chief Justice refers, Story, J., used this language:

> "It is argued that this act provides only for the admission of such records *as evidence*, but does not declare *the effect* of such evidence when admitted. This argument cannot be supported. * * *
>
> It remains only then to inquire in every case what is the effect of a judgment in the State where it is rendered" 7 Cranch, 481, 484 (1813).

The record here shows that by an independent legal proceeding instituted in the County Court of Cook County, Illinois, in September, 1900, and terminating by a final order on November 26, 1900, a succession tax upon these New York debts was duly adjudged to be due under the Illinois act of June 15, 1895. This proceeding originated in the appointment of an appraiser; the executrix and all of the legatees appeared by attorney; oral and documentary evidence was submitted; the appraiser's report was made and filed, and a final order of confirmation entered, which taxed the succession (fols. 45–78). The record in that proceeding, duly authenticated in accordance with the provisions of section 905 of the Revised Statutes, is in evidence in this case. If a similar proceeding had been started in any other court in Illinois for the purpose of levying another succession tax upon this property, the judgment in the Cook County proceeding would have had the effect of being a complete bar. When the State of New York subsequently instituted a similar proceeding in the New York Surrogates' Court for the determina-

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tion of the same fact, we submit that the proceedings in the Illinois Court must be awarded the same effect which they would have had in Illinois. Two rights of succession are mutually exclusive and contradictory. There is but one succession, and consequently but one right. If one State lawfully taxes the right, no right remains to be conferred or taxed by any other State.

The condition is not like that which would follow if it were attempted to tax the same property twice. Jurisdiction to tax is either *in personam* or *in rem*. In the case of tangible property the power to tax may be exercised by two jurisdictions. But the sole basis for an inheritance tax is the sovereign power to control the inheritance. That can exist in but one sovereignty.

III. THE PROCEEDINGS UNDER REVIEW DENY TO CITIZENS OF ILLINOIS SOME OF THE PRIVILEGES AND IMMUNITIES OF CITIZENS OF NEW YORK, IN VIOLATION OF SECTION 2 OF ARTICLE IV OF THE CONSTITUTION.

This Court had occasion to consider the meaning of this restriction in *Ward* v. *Maryland*, 12 Wall. 418.

> "Attempt will not be made to define the words 'privileges and immunities,' or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire per-

sonal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens.

"Comprehensive as the power of the States is to lay and collect taxes and excises, it is nevertheless clear, in the judgment of the Court, that the power cannot be exercised to any extent in a manner forbidden by the Constitution; and inasmuch as the Constitution provides that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, it follows that the defendant might lawfully sell, or offer or expose for sale, within the district described in the indictment, any goods which the permanent residents of the State might sell, or offer or expose for sale in that district, without being subjected to any higher tax or excise than that exacted by law of such permanent residents" (12 Wall. 430).

Judge Cooley cites this case in his work on Constitutional Limitations, and at page 602 of the 5th edition this language will be found:

"It is also believed that that provision in the Constitution of the United States, which declares that 'the citizens of each State shall be entitled to all the privileges and immunities of the citizens of the several States,' will preclude any State from imposing upon the property which citizens of other States may own, or the business which they may carry on within its limits, any higher burdens by way of taxation than are imposed upon corresponding property or business of its own citizens. This is the express decision of the Supreme Court of Alabama, following in this particular the dictum of an eminent federal judge at an early day, and the same doctrine has been recently affirmed by the federal Supreme Court."

If Mr. Blackstone had been a citizen of New York, and the deposits in question had been due him from a Chicago trust company and firm, there would have been but one succession tax—namely, that levied by the State of New York. The law in Illinois would prevent taxation there (*Scripps* v. *Board of Review*, 183 Ill. 278, 281, 282). As New York has not in the present case adopted the same harmonious rule, we are forced, as Comstock, Ch. J., says, to "impute inconsistency to the law and oppression to the taxing power" (23 N. Y. 229), and to conclude that citizens of Illinois have been denied in New York privileges and immunities which are enjoyed by citizens of the latter State.

IV. THE PROCEEDINGS UNDER REVIEW VIOLATE THE PROVISIONS OF ARTICLE XIV OF AMENDMENT TO THE CONSTITUTION IN THAT THEY (1) ABRIDGE THE PRIVILEGES AND IMMUNITIES OF THE PLAINTIFF IN ERROR AND THE OTHER LEGATEES UNDER MR. BLACKSTONE'S WILL; (2) DENY TO THEM THE EQUAL PROTECTION OF THE LAW, AND (3) DEPRIVE THEM OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW.

It is conceded that this amendment was not intended to compel the States to adopt in taxation an iron rule of equality (*Giozza* v. *Tiernan*, 148 U. S. 657, 662), and that it is sufficient if the State law is impartially administered, and the same measure of right is guaranteed to a non-resident as is awarded to the State's own citizens (*Eldridge* v. *Trezevant*, 160 U. S. 452, 469).

1. Privileges and immunities are thus defined by Chief-Justice Fuller in a recent case:

> "The privileges and immunities of citizens of the United States are privileges and immunities arising out of the nature and essential character of the national government, and granted or secured by the Constitution of the United States."
>
> *Giozza* v. *Tiernan*, 148 U. S. 657, 661.
> *Duncan* v. *Missouri*, 152 U. S. 377, 382.

It is clear, we think, for the reasons elaborated above, that the privileges and immunities claimed by the plaintiff in error not only arise out of the "nature and essential character of the national government," but are also "granted and secured by the Constitution of the United States."

2. The equal protection of the law.

Where there is discrimination in favor of resident as against non-resident tax-payers, the latter are denied the equal protection of the laws (*Savings Society* v. *Multnomah County*, 169 U. S. 421, 425). In *Lowe* v. *Kansas*, 163 U. S. 81, 85, it is said that "if the statute is applicable to all persons under like circumstances and does not subject the individual to an arbitrary exercise of power, it has not denied him the equal protection of the laws," and *Duncan* v. *Missouri*, 152 U. S. 377, was quoted in support of that proposition. In *Reagan* v. *Farmers' Loan and Trust Company*, 154 U. S. 362, 399, Mr. Justice Brewer said:

> "The equal protection of the laws which, by the Fourteenth Amendment, no State can deny to the individual, forbids legislation, in whatever

form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or of the public."

See, also,

Gulf, Colorado and Santa Fé Railway Company v. *Ellis*, 165 U. S. 150, 159–160.
Tinsley v. *Anderson*, 171 U. S. 101, 106.

3. Due process of law.

(*a*) Because of the absence of jurisdiction to tax:

"No judgment of a court is due process of law if rendered without jurisdiction in the court or without notice to the party."

"The words 'due process of law,' when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this court, 'mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.' (*Pennoyer* v. *Neff*, 95 U. S. 814, 733)" *Scott* v. *McNeal*, 154 U. S. 46.

As it is attempted in this proceeding to assess a tax on property which was not within the jurisdiction of the State of New York, and to enforce that tax against the legatees, they are threatened with forcible deprivation of their property without due process of law.

We have already said that jurisdiction to tax depends upon the domicile of the citizen within the State or the existence of his property there. This power "is necessarily limited to subjects within the jurisdiction of the State" (15 Wall. 319). As was said in *St. Louis* v. *Ferry Co.*, 11 Wall. 423, 430, "where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. * * * Jurisdiction is as necessary to valid legislative as to valid judicial action."

If jurisdiction to tax is absent, the statute and the machinery to execute it do not constitute due process of law.

See, also,

Stuart v. *Palmer*, 74 N. Y. 183, 190.
Cooley on Constitutional Limitations, 607.

(*b*) Because of the irregularity of the procedure in reversing the Surrogate's decision.

In addition to the broad constitutional reasons upon which we have heretofore dwelt, the record here discloses a technical objection to the course of procedure upon which the judgment of the Court below is based. In order to understand this it will be necessary to revert briefly to the facts. It will be remembered that by the final order of the Surrogates' Court of July 26, 1901, it was adjudged that Mr. Blackstone's property was exempt from any transfer tax under the laws of the State of New York (fol. 109). On August 12, 1902, the Comptroller of the City of New York attempted to appeal from this order to the intermediate court of

review in New York in such cases, namely, the Appellate Division of the Supreme Court in the First Department (fol. 110). The law of New York permits an appeal to be taken by any "party *aggrieved*" by such an order (Code of Civil Procedure § 2558, 1294) within thirty days from the entry thereof (*ib.* § 2571). The plaintiff in error moved to dismiss the appeal of the Comptroller of the City on the ground that he was not a person so aggrieved. This motion was denied by the Appellate Division, and afterwards the order of Surrogate Fitzgerald was reversed and an order entered fixing the tax of $77,536.09. The plaintiff in error then appealed to the Court of Appeals, but the order of the Appellate Division was affirmed and the objection of the plaintiff in error to the incapacity of the Comptroller of the City to appeal was overruled. Examination of the appendix to this brief will show that the Comptroller of the City of New York is neither mentioned in nor recognized by the transfer tax law, and since April 1, 1901, has had no more interest in its administration than the Mayor or the President of the Board of Aldermen, or a private citizen. It is true that prior to April 1, 1901, he had such an interest, but by chapter 173 of the laws of 1901, passed March 22, 1901, and taking effect April 1, 1901, his connection with the transfer tax was wholly terminated, and all of his previous powers and duties in relation thereto were devolved upon the Comptroller of the State of New York.

It is an established principle of law that the right

to appeal is purely statutory. In the present case, without any enabling statute, through an appeal permitted to be taken by an entire stranger, a final judgment exempting the property of the decedent from taxation, has been nullified, and a fresh judgment entered months after the time to appeal from the first had expired, subjecting the property in question to a tax. Our contention is that such procedure was not due process of law.

The principles of law applicable to such a situation are clear and may be briefly stated:

1. The right to appeal is purely statutory.

6 Am. and Eng. Encyc. of Law, 2d Ed. 1001.
2 Encyclopœdia of Pleading and Practice, pp. 16, 19.
Bryant v. *Thompson*, 128 N. Y. 426.
Erie R. R. Co. v. *Steward*, 9 App. Div. 187, 190 (2d Dept.).

As was said in a recent case:

> "The right to appeal is not a natural or inherent one, but rests upon the statute alone, and may be taken away by the legislature unless conferred by the organic law of the state."
>
> *Szuchy* v. *Hillside Iron & Coal Co.*, 150 N. Y. 219, 224.

2. It is only a person aggrieved by a judgment or an order who may appeal from it.

New York Code of Civil Procedure, §§ 1294, 2568.
Lawless v. *Reagan*, 128 Mass. 592.
2 Encyclopœdia of Pleading and Practice, pp. 160, 167.
2 Foster Federal Practice, § 462.

3. A person is not "aggrieved" unless the judgment or order has binding force against his rights, his person or his property.

Ross v. *Wigg*, 100 N. Y. 243, 246.
People ex rel. Banta v. *Kent*, Gen. Term, 1st Dept., 4 Week. Dig. 62.
Hobart v. *Hobart*, 86 N. Y. 636.

4. It must appear that a reversal will benefit the appellant before his appeal can be entertained.

Hyatt v. *Dusenbury*, 1 Silvernail, 475 (N. Y. Ct. of Appeals, 1887).
2 Encyclopœdia of Pleading and Practice, 161.

5. The authority of a public officer to appeal must either be specially conferred by statute, or must depend upon the maintenance of rights peculiar to himself.

People ex rel. Breslin v. *Lawrence*, 107 N. Y. 607, 609.

6. Where a party's interest in the proceeding has ceased *pendente lite*, he may not appeal.

2 Encyclopœdia of Pleading and Practice, 167.
Kelly v. *Israel*, 11 Paige 147, 152.
Card v. *Bird*, 10 Paige, 426.
Reid v. *Vanderheyden*, 5 Cow. 719, 735.
Hackley v. *Hope*, 2 Abb. Ct. of App. Dec. 298.

As was said in the last cited case:

> "Where a party has released all his interests in a suit, he has no right to appeal from an order or decree made therein which does not prejudice him, although it may be wrong as to other parties. *Steele* v. *White*, 2 *Paige* 478. Hackley having transferred and released all his

> interest in the subject matter of the litigation to the defendant Hope, and there being no decree personally against Hackley for costs or anything else, there is no ground upon which his appeal from the decree can by any contingency ever be successful" (2 Abb. Ct. of App. Dec. 300).

In *Reid* v. *Vanderheyden*, *supra*, the Court of Errors had under consideration a probate proceeding where a half brother of the testator had been made a party to the proceeding as one of the next of kin. A posthumous child of the testator was born four days before the entry of the decree admitting the will to probate, and the appeal of the half brother from the probate decree was dismissed. In reaching this conclusion the Court said:

> "It is an elementary principle, recognized in all the books, that a person having no interest in the subject of dispute, cannot be a party litigant. * * * To show the nature and universality of the rule, and illustrate and enforce it, we need only go to the doctrines of a court of equity, where the greatest possible latitude as to parties is indulged. There not only must the original parties have an interest, but that interest is followed in all its changes. Although an action may proceed in some cases in the name of the original plaintiff in trust for others, on whom the interest is cast by operation of law (11 John., 488), yet in equity, even in cases of change of bankruptcy or insolvency, a bill must be filed in nature of a bill or revivor." * * *
>
> "For the purposes of this question, then, he (the half-brother) was at the time of pronouncing the decree by the Surrogate, a mere stranger. When his interest ceased his right to farther litigate ceased with it. All power of appeal was, therefore, gone" (5 Cowen, 733, 735).

In following this decision a few years later the Court of Errors said:

> "That case (*Reid* v. *Vanderheyden*) and the reasoning and authorities by which it is supported abundantly establish the general principle that no person can prosecute a suit in chancery, either by appeal or otherwise, who is not interested in the subject matter; and that although there may have been an interest when the suit was commenced, if such interest is terminated during its progress, his right farther to interfere in the litigation is at an end."
>
> Sutherland, J., *Idley* v. *Bowen*, 11 Wend. 227, 238.

7. In the absence of express words of reservation, statutes changing procedure apply to pending proceedings.

Railroad Co. v. *Grant*, 98 U. S. 398, 401.
Matter of Davis, 149 N. Y. 539, 545.
Lazarus v. *M. E. R. Co.*, 145 N. Y. 581, 586.
Matter of Sloane, 154 N. Y. 109.
Ex parte McArdle, 7 Wall. 506, 514.

8. Transfer tax procedure and jurisdiction are special, and limited strictly by the provisions of Article X of the Tax Law.

Matter of Smith, 40 App. Div. 480.
Matter of Crerar, 56 App. Div. 479.

9. The objection may be taken either by motion to dismiss or upon the argument of the appeal on the merits.

Stoughton v. *Lewis*, 2 How. Pr., N. S. 331, 333 (Court of Appeals, 1885; s. c., opinion omitted, 98 N. Y. 637).

The Appellate Division did not question any of the foregoing principles, but said that the Comptroller of the City, having applied for the appointment of the appraiser, was authorized to continue to prosecute the proceeding, and to appeal from any order therein, until the Comptroller of the State had been substituted as a party (fol. 146).

We submit, however, that this answer to our contention is not conclusive, for the following reasons:

1. The same answer would have applied to all of the cases cited under the foregoing subdivision 6.

2. In every appeal the appellant must stand upon his own continuing right, and this right is not affected by the existence or non-existence of any other person who is authorized to appeal.

3. No substitution of the Comptroller of the State was necessary, because he was already by statute a person interested in the proceeding, and might have appealed from the Surrogate's order of July 26, 1901.

4. The procedure in the assessment of transfer taxes is not like a common law action. There is no *dominus litis*. "The surrogate, *either upon his own motion*, or upon the application of *any* interested party, including the Comptroller of the State of New York," shall, by order, direct an appraisement (Tax Law, § 230). When that order is made, the proceeding is self-prosecuting. The *appraiser* gives notice of the hearing before him, appraises the property, and draws and files his own report. Upon this report "the surrogate shall forthwith, as of course," determine the amount of

the tax, and the Comptroller of the State or any person dissatisfied may appeal (Tax Law, § 230).

No substitution of parties is made in such proceedings. Any party interested may appear at any stage and without order of substitution. In each proceeding the State, through its authorized representatives, is engaged in collecting its tribute, and the persons whose property is or may be taken, are entitled to notice of the appraisement, and of the order fixing the tax. But no other papers need be served upon them.

(*c*) Because of the failure to deduct from the value of the property the amount of the Illinois inheritance and the Federal legacy tax.

The record shows that before the New York proceeding was begun, Mrs. Blackstone had paid $64,625.56 in satisfaction of the Illinois inheritance tax (fol. 78), and $21,095 in satisfaction of the Federal legacy tax (fol. 94). Upon what theory this aggregate of $85,720.56, or such proportion thereof as the property taxed in New York bore to the decedent's entire estate, was not deducted from the $4,843,456.72 which has been taxed herein, is not clear. The New York statute (sec. 230) requires the property to be appraised "at its clear market value immediately upon such transfer, or as soon thereafter as practicable." Any legal charge against the property would seem to diminish by the amount of the charge the "clear market value" of the property.

So far as the Federal tax is concerned, the reason

assigned in New York for not deducting it, was recently said to be that this tax was levied upon the privilege of the legatee to succeed to the property and was payable out of the legacy and not out of the general estate (*Matter of Gihon*, 169 N. Y. 443, 447). In Massachusetts, the contrary conclusion was reached in *Hooper* v. *Shaw*, 176 Mass. 190, and this appears to be more in accord with the reasoning in *United States* v. *Perkins*, *supra* (163 U. S. 628).

So far as the Illinois tax is concerned, the question seems to be *res nova*. Possibly this may be due to the fact that the present case is the first instance of the imposition of two State inheritance taxes upon the same succession.

With respect to all of the foregoing reasons why the proceedings in the courts below did not constitute due process of law, we may conclude by quoting this language of Mr. Justice Harlan:

> " Nor is the contention that the railroad company has been deprived of its property without due process of law entirely met by the suggestion that it had due notice of the proceedings for condemnation, appeared in court, and was admitted to make defence. It is true that this court has said that a trial in a court of justice according to the modes of proceeding applicable to such a case, secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice—the court having jurisdiction

of the subject-matter and of the parties, and the defendant having full opportunity to be heard—met the requirement of due process of law. *United States* v. *Cruikshank*, 92 U. S. 542, 554; *Leeper* v. *Texas*, 139 U. S. 462, 468. But a State may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance, not to form."

Chicago, Burlington and Quincy Railroad Company v. *Chicago*, 166 U. S. 226, 234–5.

Conclusion.

In presenting these views to the Court we are not striving to impair the sovereign power of the several states to tax successions. We do, however, urge most earnestly that this power may under the guidance of constitutional restraints, and in accord with established principles of law, be exercised fairly and harmoniously. It is therefore respectfully submitted that

The orders sought to be reviewed herein should be reversed, and the order of the New York Surrogates' Court of July 26, 1901, affirmed and reinstated.

Dated December 30, 1902.

Edward W. Sheldon,
Counsel for plaintiff in error.

APPENDIX.

TAX LAW OF NEW YORK.

ARTICLE X.

TAXABLE TRANSFERS.

In force April 1, 1901.

Section 220. Taxable transfers.
221. Exceptions and limitations.
222. Lien of taxes and payment thereof.
223. Discount, interest and penalty.
224. Collection of tax by executors, administrators and trustees.
225. Refund of tax erroneously paid.
226. Deferred payments.
227. Taxes upon devises and bequests in lieu of commissions.
228. Liability of certain corporations to tax.
229. Jurisdiction of the surrogate.
230. Appointment of appraisers, stenographers, et cetera.
230a. Composition of transfer tax upon certain estates
231. Proceedings by appraisers.
232. Determination of surrogate.
233. Surrogate's assistants in New York county.
234. Surrogate's assistant in Kings and certain other counties.
235. Proceedings for the collection of taxes.
236. Receipt from the county treasurer and comptroller.

237. Fees of county treasurer.
238. Books and forms to be furnished by the state comptroller.
239. Reports of surrogate and county clerk.
240. Reports of county treasurer.
240a. Report of State comptroller; payment of taxes.
241. Application of taxes.
242. Definitions.
243. Exemptions in Article one not applicable.

§ 220. TAXABLE TRANSFERS.—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of the state.

2. When the transfer is by will or intestate law, of property within the state, and the decedent was a nonresident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a nonresident, when such nonresident's property is within this state, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

4. (Such tax shall be imposed) When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act.

5. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation

possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omissions or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

6. The tax imposed thereby shall be at the rate of five per centum upon the clear market value of such property, except as otherwise prescribed in the next section. (*Thus amended by L.* 1897, *chap.* 284.)

§ 221. EXCEPTIONS AND LIMITATIONS.—When the property or any beneficial interest therein passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this state, of the decedent, grantor, donor or vendor, or to any child, to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, or to any lineal descendant of such decedent, grantor, donor or vendor born in lawful wed'ock, such transfer of property shall not be taxable under this act, unless it is personal property of the value of ten thousand dollars or more, in which case it shall be taxable under this act at the rate of one per centum upon the clear market value of such property. But any property heretofore or hereafter devised or bequeathed to any person who is a bishop or to any religious corporation including corporations organized exclusively for bible or tract purposes shall be exempted from and not subject to the provisions of this act. There shall also be exempted from and not subject to the provisions of this act personal property other than money or securities bequeathed to a corporation or association organized exclusively for the moral or mental im-

provement of men or women or for charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, cemetery or historical purposes or for the enforcement of laws relating to children or animals or for two or more of such purposes and used exclusively for carrying out one or more of of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member, or employee thereof shall rec ve or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees—or if it be not in good faith organized or conducted exclusively for one or more of such purposes. (*Thus amended by L.* 1898, *chap.* 88, *and L.* 1901, *chap.* 458, *taking effect April* 22, 1901.)

§ 222. LIEN OF TAXES AND PAYMENT THEREOF.—Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the administrators, executors and trustees of every estate so transferred shall be personally liable for such tax until its payment. The tax shall be paid to the treasurer in a county in which the office of appraiser is not salaried, and in other counties, to the state comptroller and said treasurer or state comptroller shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment. If such duplicate receipts were received from a county treasurer such executor, administrator or trustee shall immediately send one of them to the state comptroller, and if received from the state comptroller he shall immediately send one of them to the state treasurer. The state comptroller or the state treasurer, as the case may be, receiving such receipt shall charge the officer receiving the tax with the amount thereof and seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the

settlement of his accounts; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this act unless he shall produce a receipt so sealed and countersigned, or a certified copy thereof, or unless a bond shall have been filed as prescribed by section two hundred and twenty-six of this chapter. All taxes imposed by this article shall be due and payable at the time of the transfer, except as hereinafter provided. Taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof cannot be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the persons or corporations beneficially entitled thereto shall come into actual possession or enjoyment thereof. All taxes which, at the time the amendment to this section takes effect, have been assessed by an order of the surrogate, or which have accrued, in a county in which the office of appraiser is salaried, shall be paid to the state comptroller, as provided by this article. *(Thus amended by L.* 1897, *chap.* 284, *and L.* 1901, *chap.* 173; *taking effect April* 1, 1901.*)*

§ 223. DISCOUNT, INTEREST AND PENALTY.—If such tax is paid within six months from the accruing thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged. In all cases when a bond shall be given under the provisions of section two hundred and twenty-six of this chapter, interest shall be charged at the rate of six per centum from the accrual of the tax until the date of payment thereof.

§ 224. COLLECTION OF TAX BY EXECUTORS, ADMINISTRATORS AND TRUSTEES.—Every executor, administrator or trustee, shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer or state comptroller, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor or trustee, and the tax shall remain a lien or charge on such real property until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced, or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require. *(Thus amended by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.*)*

§ 225. REFUND OF TAX ERRONEOUSLY PAID.—If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the surrogate having jurisdiction, on notice to the state comp-

troller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the county treasurer, or state comptroller, or if such tax has been paid to such treasurer or state comptroller, he shall refund out of the funds in his hands or custody to the credit of such taxes such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this article. If after the payment of any tax in pursuance of an order fixing such tax, made by the surrogate having jurisdiction, such order be modified or reversed within two years from and after the date of entry of the order fixing the tax, on due notice to the comptroller of the state, the state comptroller shall, if such tax was paid in a county in which the office of appraiser is not salaried, by order, direct and allow the treasurer of the county, to refund, or if paid in any other county, he shall himself refund to the executor, administrator, trustee, person or persons, by whom such tax has been paid, the amount of any moneys paid or deposited on account of such tax in excess of the amount of the tax fixed by the order modified or reversed, out of the funds in his hands or custody, to the credit of such taxes, and to credit himself with the same in the account required to be rendered by him under this act ; but no application for such refund shall be made after one year from such reversal or modification, and the comptroller of the state shall deduct from the fees allowed by this article to the county treasurer the amount theretofore allowed him upon such overpayment. Where it shall be proved to the satisfaction of the surrogate who has assessed the tax upon the transfer of property under this article that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such surrogate to enter an order assessing the tax upon the amount wrongfully or erroneously deducted. *(Thus amended by L. 1897, chap. 284 ; L. 1900, chap. 382, and L. 1901, chap. 173, taking effect April 1, 1901).*

§ 226. DEFERRED PAYMENT.—Any person or corporation beneficially interested in any property chargeable with a tax under this article, and executors, administrators and

trustees thereof may elect within eighteen months from the date of the transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in penalty of three times the amount of any such tax, with such sureties as the surrogate of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate. Such bond must be executed and filed and a full return of such property upon oath made to the surrogate within one year from the date of transfer thereof as herein provided, and such bond must be renewed every five years. (*Thus amended by L.* 1897, *chap.* 284).

§ 227. TAXES UPON DEVISES AND BEQUESTS IN LIEU OF COMMISSIONS.—If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised, above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

§ 228. LIABILITY OF CERTAIN CORPORATIONS TO TAX.—If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the state comptroller on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the state comptroller at least ten days prior to the said transfer; nor shall any such safe deposit

company, bank or other institution, person or persons deliver or transfer any securities or assets of the estate of a non-resident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of this article, unless the state comptroller consents thereto in writing. And it shall be lawful for the said county treasurer or state comptroller, personally, or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination, or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank or other institution, person or persons, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this article. *(Thus amended by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.*)*

§ 229. JURISDICTION OF THE SURROGATE.—The surrogate's court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogate's courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil proceedure shall set forth the name of the county treasurer in a county in which the office of appraiser is not salaried, and in the other counties the state comptroller, as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this state and the value thereof; and upon the presentation thereof the surrogate shall issue a cita-

tion directed to such county treasurer or state comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the county treasurer or state comptroller were a creditor of the decedent. *(Thus amended by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.)

§ 230. APPOINTMENT OF APPRAISERS, STENOGRAPHERS, ET CETERA.—The state comptroller shall appoint and may at pleasure remove, not to exceed five persons in the county of New York; two persons in the county of Kings, and one person in the counties of Albany, Dutchess, Erie, Monroe, Oneida, Onondaga, Orange, Queens, Rennsselaer, Richmond, Suffolk and Westchester,* to act as appraisers therein. The appraisers so appointed shall receive an annual salary to be fixed by the state comptroller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the state comptroller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts: In New York county, four thousand dollars; in Kings county, three thousand dollars; in Erie county, three thousand dollars; in Westchester county, eighteen hundred dollars; in Albany, Queens, Monroe and Onondaga counties one thousand five hundred dollars; in Dutchess, Oneida, Suffolk, Orange and Rensselaer counties one thousand dollars, and in Richmond county five hundred dollars.

Each of the said appraisers shall file with the state comptroller his oath of office and his official bond in the penal sum of not less than one thousand nor more than twenty thousand dollars, in the discretion of the state comptroller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney-general and the state comptroller. The state comptroller shall retain out of any funds in his hands on account of said tax the following

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*Not in effect as to underscored counties until January 1, 1902.

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amounts: 1. A sum sufficient to provide the appraisers of New York County with two stenographers, and of Kings county with one stenographer, appointed by the state comptroller, whose salary shall not exceed fifteen hundred dollars a year each. 2. A sum to be used in defraying the expenses for office rent, stationery, postage, process serving, et cetera, necessarily incurred in the appraisal of estates, not exceeding three thousand dollars a year in New York county, and one thousand dollars a year in Kings county. In each county in which the office of appraiser is not salaried the county treasurer shall act as appraiser. The surrogate, either upon his own motion or upon the application of any interested party (including the comptroller of the state of New York), shall by order direct the county treasurer in a county in which the office of appraiser is not salaried, and in any other county the person or one of such persons so designated as appraisers to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article. Whenever a transfer of property is made, upon which there is, or in any contingency there may be, a tax imposed, such property shall be appraised at its clear market value immediately upon such transfer, or as soon thereafter as practicable. The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum. In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made in respect of any contingent incumbrance thereon, nor in respect of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to

the person properly entitled thereto of a proportionate amount of such tax in respect of the amount or value of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed in respect of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section two hundred and twenty-five of this article. Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person or corporation upon the extinction or determination of such charge, estate or interest shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase or benefit from the person from whom the title to their respective estates or interests is derived. When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred ; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with legal interest thereon from the time of payment. Such return of overpayment shall be made in the manner provided by section two hundred and twenty-five of this article. Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at

their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited. Where an estate for life or for years can be divested by the act or an omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting. All estates upon remainder or reversion, which vested prior to May first eighteen hundred and ninety-two, but which will not come into actual possession or enjoyment of the person or corporation beneficially interested therein until after the passage of this act shall be appraised and taxed as soon as the person or corporation beneficially interested therein shall be entitled to the actual possession or enjoyment thereof. (*Thus amended by L.* 1897, *chap.* 284 ; *L.* 1899, *chap.* 76 ; *L.* 1900, *chap.* 658 ; *L.* 1901, *chap.* 173, *and L.* 1901, *chap.* 493, *taking effect April* 23, 1901.)

§ 230a. COMPOSITION OF TRANSFER TAX UPON CERTAIN ESTATES.—The county treasurer of any county in which the office of appraiser is not salaried, by and with the consent of the comptroller of the state of New York, expressed in writing, and the state comptroller in any other county, by and with the consent of the attorney-general expressed in writing, is hereby empowered and authorized in a county in which they receive payments on account of transfer tax, to enter into an agreement with the trustees of any estate therein situate, in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced, that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under the provisions of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five ; chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two, or chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, and the several acts amendatory thereof and supplemental thereto ; and to compound such taxes upon such terms as may be deemed equitable and expedient ; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition ; provided, however, that no such composition shall be conclusive in favor of said trus-

tees as against the interests of such *cestuis que trust*, as may possess either present rights of enjoyment or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee. Composition or settlement made or effected under the provisions of this section shall be executed in tripicate, and one copy shall be filed in the office of the state comptroller, one copy in the office of the surrogate of the county in which the tax was paid, and one copy to be delivered to the executors, administrators or trustees who shall be parties thereto. *(Inserted by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.*)*

§ 231. PROCEEDINGS BY APPRAISER.—Every such appraiser shall fofthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value as herein prescribed, and for that purpose the said appraiser is authorized to issue subpœnas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require. Every appraiser, except in the counties in which the office of appraiser is salaried, for which provision is hereinbefore made, shall be paid on the certificate of the surrogate, subject to review and audit by the state comptroller, his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, out of any funds he may have in his hands as county treasurer on account of any tax imposed under the provisions of this article. Appraisers appointed under this article in proceedings pending at the time the amendment to this section takes effect shall complete the appraisals therein and file their reports as

herein provided, and shall be entitled to the compensation authorized by law at the time of their appointment, to be paid by the state comptroller in counties in which the office of appraiser is salaried, and in other counties by the county treasurer, out of any moneys in his hands on account of this tax. (*Thus amended by L.* 1900, *Chap.* 658, *and L.* 1901, *chap.* 173, *taking effect April* 1, 1901).

§ 232. DETERMINATION OF SURROGATE. The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the state comptroller. From such report and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser. The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or contingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct. The comptroller of the state of New York or any person dissatisfied with the appraisement or assessment and determination of tax, may appeal therefrom to the surrogate, within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken. The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all parties known to be interested therein, including the state comptroller. If, however, it appear at this stage of the proceedings that any of such parties known to be interested in the estate is an infant or an incompetent, the surrogate shall, if the interest of such infant or incompetent is presently involved and is adverse to that of any of the other persons interested therein, appoint a

special guardian of such infant; but nothing in this provision shall affect the right of an infant over fourteen years of age or of any one on behalf of an infant under fourteen years of age to nominate and apply for the appointment of a special guardian for such infant at any stage of the proceedings. Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the comptroller of the state may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively or erroneously made, make application to a justice of the supreme court of the judicial district in which the former owner of such estate resided, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties and receive compensation at the rate of five dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the county treasurer or state comptroller, out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surrogate, and shall be filed by such justice in the office of the state comptroller, and a certified copy thereof transmitted to the surrogate's court of the proper county. (*Thus amended by L.* 1897, *chap.* 284; *L.* 1899, *chap.* 672, *and L.* 1901, *chap.* 173, *taking effect April* 1, 1901.)

§ 233. SURROGATES' ASSISTANTS IN NEW YORK COUNTY.—The surrogates of the county of New York may jointly appoint and at pleasure remove assistants as follows:

1. In New York county, a transfer tax assistant, at an annual salary of four thousand dollars; a transfer tax clerk, at an annual salary of two thousand four hundred dollars; an assistant clerk, at an annual salary of eighteen hundred dollars; a recording clerk, at a salary of thirteen hundred dollars; and

shall be entitled to not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article. Such salaries and expenses shall be payable monthly by the state comptroller on the certificate and requisition of the surrogates, accompanied by proper vouchers, out of any funds in his hands on account of taxes collected under this article. *(Thus amended by L.* 1898, *chap.* 289, *and L.* 1901, *chap.* 173, *taking effect April* 1, 1901.)

§ 234. SURROGATES' ASSISTANTS IN KINGS AND CERTAIN OTHER COUNTIES.—The surrogates of the counties mentioned in this section may appoint and at pleasure remove assistants as follows:

1. In the county of Kings, a transfer tax assistant, at an annual salary of four thousand dollars, and a transfer tax clerk, at an annual salary of two thousand dollars; and shall be entitled to not more than five hundred dollars a year, for expenses necessarily incurred in the assessment and collection of taxes under this article.

2. In the county of Westchester, a transfer tax assistant, at an annual salary to be fixed by the surrogate, of not more than two thousand dollars.

3. In the county of Suffolk, a transfer tax clerk, at an annual salary of seven hundred and twenty dollars.

4. In the county of Oneida, not more than two transfer tax clerks, at an annual compensation to be fixed by the surrogate, of not more in the aggregate than twelve hundred dollars.

5. In the county of Ulster, a transfer tax clerk, at an annual salary, to be fixed by the surrogate, of not more than seven hundred and twenty dollars.

6. In the county of Onondaga, a transfer tax clerk, at an annual salary, to be fixed by the surrogate, of not more than twelve hundred dollars.

7. In the county of Monroe, two transfer tax clerks, at an annual salary of seven hundred and fifty dollars each; and shall be entitled to not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

8. In the county of Erie, a transfer tax clerk, at an annual salary of eighteen hundred dollars.

9. In the county of Albany, a transfer tax clerk at an annual salary to be fixed by the surrogate, of not more than one thousand dollars.

Such salaries and expenses shall be payable monthly by the state comptroller on the certificate and requisition of the surrogate of each such county, accompanied by proper vouchers, out of any funds in his hands on account of taxes collected under this article. *(Thus amended by L.* 1899, *chap.* 389, *and L.* 1901, *chap.* 173, *taking effect April 1,* 1901.*)*

§ 235. PROCEEDINGS FOR THE COLLECTION OF TAXES.—If the county treasurer or state comptroller shall have reason to believe that any tax is due and unpaid in a county in which he is authorized to receive the tax under this article, after the refusal or neglect of the persons liable therefor to pay the same, he shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney, if he have probable cause to believe that such tax is due and unpaid, shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the code of civil procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon request of the district attorney, county treasurer, or the comptroller of the state, furnish, without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the state without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the county treas-

urer or state comptroller may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest the sum of two hundred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the state treasurer shall pay or allow to the county treasurer or the state comptroller all expenses incurred for the service of citations and other lawful disbursements not otherwise paid. In proceedings to which any county treasurer or the state comptroller is cited as a party under sections two hundred and thirty and two hundred and thirty-one of this article, the state comptroller is authorized to designate and retain counsel to represent such county treasurer or state comptroller therein, and to direct such county treasurer in a county in which the office of appraiser is not salaried to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax, and in any other county the state comptroller shall pay such expenses out of any funds which may be in his hands on account of this tax; provided, however, that in the collection of taxes upon estates of non-resident decedents, which estates have been concealed or the taxes thereon evaded, the state comptroller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected. And the comptroller of the state is hereby authorized, with the approval of the attorney-general, and a justice of the supreme court of the judicial district in which the former owner resided, to compromise and settle the amount of such tax in any case where controversies have arisen or may hereafter arise as to the relationship of the beneficiaries to the former owner thereof. (*Thus amended by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.)

§ 236. RECEIPT FROM THE COUNTY TREASURER AND COMPTROLLER.—Any person shall upon the payment of the sum of fifty cents be entitled to a receipt from the county treasurer of any county or the state comptroller, or at his option to a copy of a receipt that may have been given by such treasurer or

state comptroller for the payment of any tax under this article, under the official seal of such treasurer or comptroller, which receipt shall designate upon what real property, if any, of wh ch any decedent may have died seized, such tax shall have been paid, by whom paid, and whether in full of such tax. Such receipt may be recorded in the clerk's office of the county in which such property is situate, in a book to be kept by him for that purpose, which shall be labeled "transfer tax." *(Thus amended by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.)

§ 237. FEES OF COUNTY TREASURER.—The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain on all taxes paid and accounted for by him each year under this article, five per centum on the first fifty thousand dollars, three per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers. *(Thus amended by L. 1898, chap. 289, and L. 1901, chap. 173, taking effect April 1, 1901.)*

§ 238. BOOKS AND FORMS TO BE FURNISHED BY THE STATE COMPTROLLER.—The comptroller of the state shall furnish to each surrogate, a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places, residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article,

and the value of annuities, life estates, terms of years, and other property of any such decedent or given by him in his will or otherwise, as fixed by the surrogate, and the tax assesed thereon, and the amounts of any receipts for payment or any tax on the estate of such decedent under this article filed with him. The state comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book.

§ 239. REPORTS OF SURROGATE AND COUNTY CLERK.—Each surrogate shall, on January, April, July and October first of each year, make a report in duplicate, upon the forms furnished by the comptroller containing all the data and matters required to be entered in such book, one of which shall be immediately delivered to the county treasurer and the other transmitted to the state comptroller. The county clerk of each county, except in the counties where the registers perform the duties of the county clerk with respect to the recording of deeds, and when in such counties the registers, shall, at the same times, make reports in duplicate, containing a statement of any deed or other conveyance filed or recorded in his office, of any property, which appears to have been made or intended to take effect in possession or enjoyment after the death of the grantor or vendor, with the name and place of residence of such grantor or vendor, the name and place of residence of the grantee or vendee, and a description of the property transferred, one of which duplicates shall be immediately delivered to the county treasurer or comptroller and the other transmitted to the state comptroller. In a county in which the office of appraiser is salaried but one copy of each such report need be made, which shall be transmitted to tne state comptroller as herein required. *(Thus amended by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.*)*

§ 240. REPORTS OF COUNTY TREASURER.—Each county treasurer in a county in which the office of appraiser is not salaried shall make a report, under oath, to the state comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for

what estate and by whom and when paid. The form of such report may be prescribed by the state comptroller. He shall, at the same time, pay the state treasurer all taxes received by him under this article and not previously paid into the state treasury, and for all such taxes collected by him and not paid into the state treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum. *(Thus amended by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.*)*

§ 240a. REPORT OF STATE COMPTROLLER; PAYMENT OF TAXES.—The state comptroller shall deposit all taxes collected by him under this article in a responsible bank, banking house or trust company in the city of Albany, as, in the opinion of the comptroller are secure, and pay the highest rate of interest to the state for such deposits, to the credit of the state comptroller on account of the transfer tax. And every such bank, banking house or trust company shall execute and file in this office an undertaking to the state, in the sum, and with such sureties, as are required and approved by the comptroller, for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking-house or trust company, with interest thereon on daily balances at such rate as the comptroller may fix. Every such undertaking shall have endorsed thereon, or annexed thereto, the approval of the attorney-general as to its form. The state comptroller shall on the first day of each month make a verified return to the state treasurer of all taxes received by him under this article, stating for what estate, and by whom and when paid; and shall credit himself with all expenditures made since his last previous return on account of such taxes, for salary, refunds, or other purpose lawfully chargeable thereto. He shall at the same time pay to the state treasurer the balance of such taxes remaining in his hands at the close of business on the last day of the previous months, as appears from such returns. *(Inserted by L. 1901, chap. 173, taking effect April 1, 1901.)*

§ 241. APPLICATION OF TAXES.—All taxes levied and collected under this article when paid into the treasury of the state shall be applicable to the expenses of the state govern-

ment and to such other purposes as the legislature shall by law direct. *(Thus amended by L.* 1901, *chap.* 173, *taking effect April* 1, 1901.)

§ 242. DEFINITIONS.—The words "estate" and "property," as used in this article, shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this article, and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and shall include all property or interest therein, whether situated within or without this state. The word "transfer," as used in this article, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words "county treasurer," "comptroller," and "district attorney," as used in this article, shall be taken to mean the treasurer, state comptroller or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-nine of this article. *(Thus amended by L.* 1898, *chap.* 88, *and L.* 1901, *chap.* 173, *taking effect April* 1, 1901*).*

§ 243. EXEMPTIONS IN ARTICLE ONE NOT APPLICABLE.—The exemptions enumerated in section four of the tax law, of which this article is a part, shall not be construed as being applicable in any manner to the provisions of article ten hereof. (*Added by L.* 1900, *chap.* 382, *taking effect April* 11, 1900.)

L. 1901, chap. 173, § 17. REPEAL.—Chapter eight hundred and sixty-one of the laws of eighteen hundred and ninety-five; chapters nine hundred and fifty-two and nine hundred and fifty-three of the laws of eighteen hundred and ninety-six, chapter three hundred and seventy-five of the laws of eighteen hundred and ninety-seven, and chapters two hundred and sixty-nine, two hundred and seventy and four hundred and six of the laws of eighteen hundred and ninety-nine, and chapter three hundred and seventy-nine of the laws of nineteen hundred, are hereby repealed.

L. 1901, chap. 173, § 18. TAKING EFFECT.—This act shall take effect April first, nineteen hundred and one, except that salaried appraisers for the counties of Albany, Suffolk, Westchester, Dutchess, Monroe, Oneida, Onondaga, Orange and Rensselaer shall not be appointed before January first, nineteen hundred and two, and until such time such counties shall be deemed counties in which the office of appraiser is not salaried under the provisions of this act. (*Thus amended by L. 1901, chap. 288, taking effect April 5, 1901.*)

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APPENDIX.

CHARTER OF UNITED STATES TRUST COMPANY OF NEW YORK.

CHAPTER 204 OF THE LAWS OF 1853, AS AMENDED BY CHAPTER 60 OF THE LAWS OF 1863, CHAPTER 309 OF THE LAWS OF 1874, CHAPTER 433 OF THE LAWS OF 1892, AND SECTION 163 OF THE BANKING LAW (CHAPTER 689 OF THE LAWS OF 1892).

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

§ 1. From the time this act shall commence and take effect, Elisha Riggs, Peter Cooper, Watts Sherman, Luther Bradish, John J. Phelps, Jacob A. Westervelt, Erastus Corning, Shepherd Knapp, Robert Kelly, Elbridge G. Spaulding, Frederick Sheldon, Greene C. Bronson, Wilson G. Hunt, David Hadden, Royal Phelps, Stephen Cambreleng, George T. Adee, John J. Cisco, Edward H. Gillilan, Joseph Walker, Rufus Keeler, Charles E. Bill, Edmund Coffin, James Suydam, Joshua J. Henry, William Tucker, Daniel S. Miller, Gerard Stuyvesant, Thomas Slocumb, Jacob Harsen, James S. Seymour, James Marsh, William C. Wetmore, Benjamin F. Wheelwright, John C. Beach, Caleb O. Halsted, Charles M. Connolly, Benjamin R. Winthrop, Edgar S. Van Winkle, William W. Livermore, Dan H. Arnold, Edward Dewitt, and all such persons as shall hereafter become stockholders in the Company hereby incorporated, shall be a body politic and corporate by the name of the "United States Trust Company of New York."

§ 2. In addition to the general powers and privileges of a corporation, as the same are declared in the third title, of the

eighteenth chapter, of the first part of the Revised Statutes, the corporation hereby created shall have power:

1. To receive moneys in trust and to accumulate the same at such rate of interest as may be obtained or agreed on, or to allow such interest thereon as may be agreed on, not exceeding in either case the legal rate.

2. To accept and execute all such trusts of every description as may be committed to them by any person or corporation whatsoever, or may be transferred to them by order of the supreme court, or by a surrogate, or by any of the courts of record.

3. To take and accept by grant, assignment, transfer, devise or bequest, and hold any real or personal estate on trusts created in accordance with the laws of this state or of the United States, and execute such legal trusts in regard to the same as may be declared, established or agreed upon in regard thereto.

4. To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

5. To act as the fiscal or transfer agent for the purpose of receiving and disbursing money, and issuing, registering, transferring and countersigning the certificates of stock, bonds or other evidences of debt of any corporation, association, municipality, state or public authority, on such terms as may be agreed upon.

6. To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages and other securities; and when moneys, or securities for moneys, are borrowed or received on deposit, or for investment, the bonds or obligations of the company may be given therefor, but nothing herein contained shall be construed as giving the right to issue bills to circulate as money.

7. To be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator with or without the will annexed of the estate of any deceased person, and to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards.

Whenever application shall be made to any court of this

state, or to a surrogate of any county of this state, for letters testamentary on any last will and testament, by the terms of which said company is appointed executor thereof, the said court or surrogate shall grant letters testamentary thereon to said company. Whenever application shall be made to any court of this state, or to a surrogate of any county, for letters of administration upon the estate of any deceased person, with or without the will annexed, and it shall appear that there are no next of kin of the deceased willing, properly qualified and able to accept such administration, such court, or surrogate may, at the request of any party interested in the estate, whether as creditor or beneficiary, grant letters of administration on said estate to said company.

§ 3. In all cases where an application shall be made to any court of this state, or to a surrogate having jurisdiction, for the appointment of a guardian to any infant, the annual income of whose estate shall exceed the sum of one hundred dollars, the said court or surrogate shall have power to appoint the said company as guardian of the estate of such infant; and every court into which moneys may be paid by parties, or be brought by order or judgment, may, by order, direct the same to be deposited with the said company.

§ 4. On any sum of money not less than one hundred dollars, which shall be collected or received by the said company in its capacity of guardian, receiver or depository of moneys in court, an interest shall be allowed by the said company of not less than the rate of three per cent. annually, which interest shall continue until the moneys so received shall be duly expended or distributed.

§ 5. Where the annual income of an infant, of whose estate the said company shall be a guardian, shall exceed the sum allowed, or which may be sufficient for the education and support of such infant, such surplus income shall be accumulated by the said company for the benefit of such infant, by adding interest on the whole as a new principal; and the interest so to be allowed and added in such accumulation, shall in no case be less than three per cent.

§ 6. No bond nor other collateral security shall be required from the said company for or in respect of any trust nor when appointed guardian, receiver, depositary, executor or administrator, with or without the will annexed, but all investments of money received by the said company in either of such characters shall be at the sole risk of the said corporation, and for all losses of such moneys, the capital stock, property and effects of the said corporation shall be absolutely liable, and in case of the dissolution of said company by the legislature the supreme court, or otherwise, the debts due from the company as guardian, receiver or depositary of moneys in court, or as executor or administrator, with or without the will annexed, hall have a preference.

§ 7. The capital of the said company shall be one million of dollars, which shall be divided into shares of one hundred dollars each. The capital shall be invested in bonds and mortgages, on unincumbered real estate, within the State of New York, worth double the amount loaned thereon, or in stocks of the United States, or of this state, or in stocks or bonds of the incorporated cities of this state, authorized to be issued by the Legislature; and within two years after the said company commences business, at least one-half of the capital shall be invested, and thereafter remain constantly invested, in bonds and mortgages on real estate without the limits of the city and county of New York.

§ 8. After the sum of five hundred thousand dollars shall have been paid in and invested, and before the said corporation shall commence business, the trustees shall assign and tranfer, to the superintendent of the banking department, bonds and mortgages on unincumbered real estate, within the State of New York, worth double the amount secured thereby; or shall transfer and assign to the said superintendent public stocks of the United States, or of the State of New York, or of any incorporated city of this state, to the amount of one hundred thousand dollars, which bonds and mortgages, or stocks, shall be held by the said superintendent of the banking department, in trust as security for the depositors and creditors of said corporation, and subject to the sale and disposal of the said superintendent of the banking department, upon the order of the supreme court, as

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hereinafter provided. Upon the assignment of the said bonds and mortgages, and stock the said superintendent of the banking department shall issue to the said corporation a certificate of such fact, upon the receipt of which the said corporation may commence business; and an equal amount in value, to be determined by said superintendent, of such stock, and bonds and mortgages shall at all times, during the corporate existence of said company, remain in the possession of said superintendent of said banking department. Until otherwise ordered by the supreme court the superintendent of the banking department shall pay over to the said company the interest which shall be received on the securities assigned to him by the said company, or he may authorize the said company to collect the same for its own benefit.

§ 9. All the corporate powers of the said company shall be exercised by a board of trustees, and such officers and agents as they shall appoint. The board of trustees shall consist of not fewer than thirteen nor more than thirty persons, two-thirds of whom at least must be citizens of this state and stockholders to the amount of ten shares each, at least; and the first board of trustees shall consist of the first thirty persons whose names are mentioned in the first section of this act, who shall possess the necessary qualifications as above declared. They shall elect a president annually from their own body, and shall have power to declare, by a by-law, what number of trustees shall be a quorum for the transaction of business.

§ 10. The board of trustees shall divide itself, by lot, into three classes of ten each. The term of office of the first class shall expire at the end of one year; that of the second class at the end of two years; and that of the third class at the end of three years; and at the expiration of the first year, and annually thereafter, ten trustees shall be chosen, who shall hold their office for three years, or until their successors are elected. Trustees shall be re-eligible, and vacancies occurring in the intervals of elections shall be filled by the board.

§ 11. The election for trustees shall be held annually at the office of the company, and the board shall give at least

ten days' notice thereof, in two daily newspapers published in the city of New York. In case of a failure to elect on that day, the trustees whose regular terms do not expire, shall proceed to elect ten trustees, (or such number as may have failed of election), who shall, with them, constitute the board. Before any member shall enter upon the duties of a trustee, his election shall be approved by the supreme court, and in case of disapproval by said court, the board of trustees shall fill the vacancy thereby created, subject to approval as before.

§ 12. Every election for trustees shall be by "ballot," and a plurality of votes shall elect; three inspectors for the next succeeding election shall be elected at the same time and in the same manner.

§ 13. Every shareholder shall be entitled to one vote for trustees for every share of capital stock standing in his name on the books of the company.

§ 14. Within six months after this act shall be in force, the corporators named in the first section shall appoint a committee of not less than three, nor more than five, of their own number, whose duty it shall be to open books for subscription to the capital stock, and who shall give at least ten days' notice, in two daily newspapers in the city of New York, of the time and place at which said books will be opened.

§ 15. Every subscriber shall, at the time of subscription, pay to the committee receiving the same the sum of ten dollars on each share by him subscribed; and after the shares shall have been distributed and allotted, each stockholder shall pay the whole amount remaining due on the shares so held by him within twelve months thereafter, at such place and at such time or times as the trustees shall appoint, of which at least ten days' public notice shall be given; the shares of each stockholder omitting to make such payment shall be forfeited, together with all previous payments made thereon.

§ 16. No loan shall be made directly or indirectly to any trustee.

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§ 17. The certificates of stock and of moneys received in trust, issued by the said corporation, shall be assignable on the books of the company, according to such regulations as the board of trustees shall establish, but no alteration or change shall be made, in the regulations so established, unless by an order of the supreme court, made on a petition of a majority of the trustees.

§ 18. The trustees shall have a discretionary power of investing the moneys received by them, in trust, in public stocks of the United States or of any individual state, or in the bonds or stocks of any incorporated city in this state, or in such real or personal securities as they may deem proper; but the said company shall not hold stock in any private incorporated company beyond twenty-five thousand dollars.

§ 19. The amount of money which the said company shall have in trust, in deposit, or loan at any time, shall not exceed ten times the amount of its capital and surplus, nor shall its outstanding loans at any time exceed said amounts, but the said company may at any time receive in deposit and loan out any money which may be deposited with it by any of the courts of this State, including the surrogates' courts, notwithstanding such limitation.

§ 20. The board of trustees shall exhibit annually to the supreme court, on such day as said court shall appoint, a full statement of their affairs, in such form and verified in such manner as the said court shall direct. The court, should it be deemed proper, may refer such statement to a referee, with directions to make a full and thorough investigation into the affairs and management of the company, and to report his opinion in relation to the ability and integrity with which its affairs are conducted, the prudence and safety of its investments, the security afforded to those by whom its engagements are held, and the advantage derived by the public from its operations. The expenses of every investigation so made shall be defrayed by the company in such sum as the said court shall certify to be reasonable and just.

§ 21. Upon the exhibition of any such annual statement, or upon the coming in of a referee's report thereon, the court

may recommend to the trustees such alterations and amendments in the regulations and by-laws of the company as shall by the court be deemed to be required for the public good and a just regard to the security of the creditors. If any recommendation, so made by said court, shall be neglected, or without just cause, disregarded by the trustees, the court shall make a full communication of the facts to the Legislature at the first session thereafter.

§ 22. A copy of every statement so made, and of every report of a referee thereon, shall be transmitted to the comptroller by the president of the company within thirty days after it shall have been made or received.

§ 23. Whenever it shall appear to the satisfaction of the supreme court, that any officer, trustee or servant of said corporation has been guilty of any fraud or misconduct, the said court may, upon proper notice to such person, and affording him an opportunity of being heard in his defence, remove such person or persons, and make such further order and take such further measures for securing the funds and properties of the said corporation as the said court shall deem expedient, and may make such further order as the condition and circumstances of the said corporation shall require by the appointing of a receiver of the said corporation, or otherwise causing the same to go into liquidation, and by ordering the said stocks and bonds and mortgages, assigned and deposited with the superintendent of the banking department, to be sold, collected or enforced for the benefit of the depositors or creditors of said corporation.

§ 24. Whenever default shall be made in the payment of any debt or liability contracted by this corporation, the stockholders thereof shall be individually responsible, equally and ratably for the amount of such debt or liability, with interest, to the extent of their respective shares of stock in said corporation.

§ 25. For all losses of money which the capital stock shall not be sufficient to satisfy, the trustees shall be responsible, in the same manner and to the same extent that trustees are now responsible in law or equity.

§ 26. The books of the said corporation shall, at all times during their hours for business, be open for inspection and examination by the comptroller of this state, and such other person as the Legislature or comptroller may designate as their agent for such purpose.

§ 27. This Act shall not be construed to confer on the said company any right or power to make any contract, or to accept or execute any trust whatever, which it would not be lawful for any individual, under the general rules of law which are or shall be in force, to make, accept or execute; and the Legislature shall have power at any time hereafter to repeal, alter or modify this act, or any of its provisions.

§ 28. This Act shall take effect immediately.

Banking Law (Chapter 689 of the Laws of 1892):

§ 163. "Every trust company incorporated by a special law shall possess the powers of trust companies incorporated under this chapter and shall be subject to such provisions of this chapter as are not inconsistent with the special laws relating to such specially chartered company."

The powers and obligations of trust companies formed under this general act are set forth in Article IV of the Banking Law, and do not differ materially from those specified in the foregoing charter.

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EVENING POST JOB PRINTING HOUSE, NEW YORK.

No. 423.

Office Supreme Court U.S.
FILED
NOV 15 1902
JAMES H. MCKENNEY,
Clerk.

Brf. of Offenbacher for D. Cs. (mo.

Filed Nov. 15, 1902.

Supreme Court of the United States.

ISABELLA F. BLACKSTONE, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of York,
Defendants in Error.

October Term, 1902.
No. 423.

BRIEF IN SUPPORT OF MOTION OF DEFENDANTS IN ERROR.

This is a motion by defendants in error to compel the plaintiff in error to file a bond or other security in a sum sufficient adequately to secure, pending this appeal, the amount involved in this proceeding, or else to suffer the cancellation of the approval of the bond already filed herein. The facts are fully stated in the moving affidavit. An application similar to the present one was originally made to Mr.

Justice Peckham, the Justice who approved said bond, and without having been passed upon by him, it has by his direction been brought before the Court *in banc*.

Plaintiff in error is appealing by writ of error under U. S. Rev. Stat., Sect. 709, from an order of the *Court of Appeals of the State of New York*, affirming orders of lower courts of that State fixing the tax upon the transfer of such of the property of the above named decedent as at the time of his death was situated within said State, at the sum of $77,536. Adding penalty already accrued, the amount affected by the order appealed from already exceeds $96,500. The bond is for the nominal sum of $1,000, barely sufficient to secure the costs of this appeal; but because in form it purports to secure all "*damages and costs*," it effectually stays proceedings to collect over $96,500, not otherwise secured, and which may easily be lost to the State of New York unless secured pending this appeal.

If counsel for plaintiff in error claims here, as he did before Mr. Justice Peckham on information and belief, that there is property of this estate somewhere within the State of New York, it is plain that unless that State is either properly secured or permitted at once to proceed under the order of the Court of Appeals to discover and impound sufficient property to satisfy the tax and penalty, it may be absolutely deprived of such tax by the removal or concealment of such property pending this appeal.

The bond in question, by virtue of its form and the approval of a Justice of this Court, acts as a *supersedeas* under the U. S. Rev. Stat., Section 1000, and Supreme Court Rule No. 29. The approval of so inadequate a bond was undoubtedly inadvertent. The application therefor being *ex parte*, the aforesaid facts were evidently not brought to the attention of the learned Justice approving the same. It is clear that an *ex parte* approval based on an imperfect knowledge of the facts is subject to

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withdrawal or modification by the Justice in question, or, with his consent, as in the case at bar, by the Supreme Court.

The motion of defendants in error is meritorious and of the greatest importance for the State of New York. It is respectfully submitted that it should be granted.

Dated at Washington, November 17, 1902.

JULIUS OFFENBACH,
Of Counsel for Defendants in Error.

FILE COPY.

FILED
JAN 5 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 422.

ISABELLA F. BLACKSTONE, individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

against

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

ERROR TO THE SURROGATE'S COURT OF NEW YORK COUNTY, STATE OF NEW YORK.

BRIEF FOR DEFENDANTS IN ERROR.

LOUIS MARSHALL,
JULIUS OFFENBACH,
Counsel for Defendants in Error.

F. H. Hitchcock, Printer and Bookbinder, N. Y.

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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 423.

ISABELLA F. BLACKSTONE, Individually and as Executrix of the Last Will and Testament of Timothy B. Blackstone, deceased,
Plaintiff in Error,

AGAINST

NATHAN L. MILLER, Comptroller of the State of New York, and EDWARD M. GROUT, Comptroller of the City of New York,
Defendants in Error.

ERROR TO THE SURROGATE'S COURT OF NEW YORK COUNTY, STATE OF NEW YORK.

BRIEF FOR THE DEFENDANTS IN ERROR.

Statement.

The plaintiff in error has sued out a writ of error to the Surrogate's Court in and for the County of New York, State of New York, after the proceedings in this cause had been remitted to that Court by the Court of Appeals of the State (Rec., p. 94).

These proceedings were instituted in the Surrogate's Court for the County of New York on November 10, 1900, on the petition of Bird S. Coler, Comptroller of the City of New York, under the provisions of Chapter 908 of the New York Laws of 1896, relating to the taxable transfers of property, and the acts amendatory thereof, for the purpose of subjecting to taxation, under such act, property which it was alleged was subject to such tax which on May 26th, 1900, the day of his death, belonged to Timothy B. Blackstone, then residing without the State of New York (Rec., pp. 2, 3).

On November 12, 1900, pursuant to this petition and the act under which it was filed, the Surrogate directed Charles E. Page, one of the appraisers appointed by the State Comptroller, to fix the fair market value at the time of the transfer of the property which belonged to the decedent, and which was subject to the payment of any tax imposed under the statutes (Rec., pp. 1, 2). Thereupon the appraiser gave notice of his proceedings to Isabella F. Blackstone, the executrix of the last will and testament of Timothy B. Blackstone, deceased, citing her to appear before him on December 12, 1900, at a time and place stated (Rec., p. 3).

At the time designated the plaintiff in error appeared in these proceedings both individually and as executrix of the last will and testament of Timothy B. Blackstone, deceased, and objected to the appraisal and taxation under the laws of the State of New York relating to taxable transfers, of any property as passing by transfer under such will on various grounds specified, among others, that the taxation of any property of the said Timothy B. Blackstone in this proceeding would be unconstitutional and void for reasons which were particularized (Rec., pp. 4, 5).

The plaintiff in error at the same time filed an answer (Rec., pp. 8–12), and thereafter, on January 31, 1901, the appraiser reported that he appraised the estate of the decedent at its fair market value on the 26th day of

May, 1900, the day of the death of the said decedent, as follows:

"Property of decedent in this State subject to tax in this proceeding, consisting wholly of cash on deposit with the United States Trust Company, amounting to	$4,843,456.72
And with Cuyler, Morgan & Co., amounting to	10,692.24
Total	$4,854,148.96
The proportionate amount of deductions in this State amount to	300,539.38
Leaving a net personal estate of (Rec., p. 6)."	$4,553,609.58

On February 20th, 1901, the report of the appraiser was presented to the Surrogate, and an order was made fixing the cash value, at the date of the decedent's death, of the property the transfer of which was liable to taxation in the proceeding, the tax for which it was liable being stated in such order (Rec., p. 64).

Notice of the assessment of the tax was thereupon given to each of the beneficiaries named in the testator's will, and service thereof made upon each of the persons interested in the estate (Rec., pp. 64–66).

On February 25th, 1901, Isabella F. Blackstone, individually and as executrix, appealed to the Surrogate's Court of the County of New York from each and every part of the appraisement, assessment and determination of tax herein, and from each and every part of the report of the appraiser, and of the order entered thereon purporting to assess and fix a tax upon the transfer of the property of the decedent, upon grounds which were stated in the notice of appeal (Rec., pp. 66–68).

On July 26th, 1901, the Surrogate's Court, after hearing this appeal, reversed the order of February 20th, 1901, and the transfers therein referred to were

declared to be exempt from any tax under the laws of the State of New York (Rec., pp. 68, 69).

An appeal was taken from this determination by the Comptroller of the City of New York to the Appellate Division, First Department of the Supreme Court of the State of New York, on August 12th, 1901 (Rec., p. 70), and on February 7th, 1902, the order of the Surrogate's Court so appealed from was reversed and the order of that Court entered on February 20th, 1901, was affirmed (Rec., pp. 72–74).

An appeal was then taken to the Court of Appeals by the present plaintiff in error from the order of the Appellate Division (Rec., p. 74), and on June 25th, 1902, that Court in all respects affirmed the order of the Appellate Division and remitted the proceedings to the Surrogate's Court of New York County, there to be proceeded upon according to law (Rec., p. 87).

In the answer filed by the plaintiff in error it is alleged that Timothy B. Blackstone was at the time of his death, and for many years prior thereto, a resident of Chicago, Illinois; that he never lived or did business in the State of New York, and for many years prior to March, 1899, was the president of the Chicago and Alton Railroad Company and was a large holder of its preferred and common stock; that during that month an agreement was made by the holders of more than a majority of each class of such stock to sell their holdings to certain persons acting on behalf of themselves and others for the purpose of such purchase; that by the terms of such agreement the vendors were to deposit their certificates of stock with the United States Trust Company of New York, receiving in payment therefor $200 for each share of preferred stock and $175 for each share of common stock; that on or about March 29th, 1899, the decedent, having determined to sell his stock on the terms specified, forwarded to the trust company by express from Chicago certificates for 11,450 shares of preferred stock and 15,077 shares of the common stock of the railroad company owned by him, but instead of having the proceeds of sale im-

mediately remitted to him by the trust company in accordance with a special agreement previously made by him with the trust company, he directed it upon receipt of the stock to hold temporarily the proceeds thereof to his credit individually until his further order; that by the terms of such special agreement the trust company was to hold such sums subject to his order and was to pay him interest thereon at the rate of 2½ per cent. per annum, and to repay the principal on demand provided that notice of not less than two days should be given to the trust company before any portion of such principal in excess of $100,000 was demanded (Rec., p. 9).

The answer proceeds to allege:

"that the decedent accepted such terms and received "the acknowledgment of said trust company, that it so "held to his credit individually on the 31st day of "March, 1899, the sum of $4,881,522.21 * * * that "his object in allowing such proceeds to remain transi- "torily in the City of New York was to avoid the risk "and expense of their transfer to Chicago and their "probable retransfer to New York when he had deter- "mined what permanent investment of them he should "make; * * * that at the time of the decedent's "death the balance of such deposit, including the in- "terest credited by said trust company * * * was "$4,843,456.72 * * * that at the time of the "decedent's death the firm of Cuyler, Morgan & Co. "bankers, of the City of New York, and transfer agents "of said Chicago & Alton Railroad Company, was in- "debted to him in the sum of $10,692.24, being the "balance of his deposit account with said firm." (Rec., pp. 9, 10).

The answer further alleges that no proceedings for the probate of the will or the administration of the estate of the decedent had been taken in the State of New York; that the respondent and all the next of kin and legatees of the testator reside either in the City of Chicago, or elsewhere without the State of New York; that prior to the institution of this proceeding, proceedings were duly taken in the County Court of Cook County, Illinois, under an act to tax inheritances, for

the imposition of a tax upon the real and personal estate of the decedent, and that the above mentioned balances with the United States Trust Company of New York, and Messrs. Culyer, Morgan & Co., were appraised in that proceeding and a tax fixed on the right of succession to the estate of the decedent was based thereon, and paid on November 26th, 1900 (Rec., p. 10).

In an affidavit by an officer of the Trust Company, filed on behalf of the plaintiff in error, it was alleged that "this deposit could have been withdrawn at any time by said Timothy B. Blackstone; said Trust Company issued no certificate of deposit nor pass-book at the time it undertook such deposit, and the only entry evidencing such deposit was the account so opened in said Trust Company's ledger, entitled 'Deposits in trust. Draft account'" (Rec., p. 56).

The last will and testament of the decedent, after making various bequests, devised and bequeathed to the plaintiff in error the bulk of his estate, and appointed her as his sole executrix (Rec., pp. 12-15). The inventory filed by her in the Probate Court at Cook County on September 26th, 1900, specified as personal property the following items (Rec., p. 18):

"Deposit in bank, New York City		$4,854,148 96
"Note Am't on deposit U. S. Trust Co	4,843,457 72	
"Note amount on deposit Culyer, Morgan & Co	10,692 24	

In the proceedings instituted to fix the amount of transfer tax payable under the laws of Illinois, the inventory contained the following items (Rec., p. 30):

"Cash on deposit with Culver, Morgan & Company, New York City, N. Y.	10,692 24
"Cash on deposit with United States Trust Co., New York City, N. Y.	4,843,456 72"

The correspondence passing between the decedent and the officers of the United States Trust Company

relative to the sale of his shares of stock and the deposit of the proceeds is to be found at pages 57–60 of the Record.

The charter of the Trust Company is appended to the brief of the plaintiff in error, and shows that its powers with respect to deposits are simply "to receive moneys in trust and to accumulate the same."

Assignment of Errors.

Upon these facts the plaintiff in error has predicated the following assignment of errors:

1. That the property which is the subject of taxation is situated in the State of Illinois, and that the tax laws of the State of New York have no application thereto, and the Courts of that State have no jurisdiction to assess a tax upon said property or upon the transfer or inheritance thereof or the succession thereto.

2. That if the debts due the decedent at the time of his death from the United States Trust Company of New York and the firm of Cuyler, Morgan & Co. could be deemed for any purpose property then situated within the State of New York, that such property was only transitorily within said State and the Courts of that State had no jurisdiction under Sections 8 or 10 of Article I of the Constitution of the United States, or otherwise, to assess a tax thereon.

3. That the Statute of the State of New York relating to the taxable transfers of property applied to the facts and circumstances of this case, and the authority exercised under said Statute, as interpreted by the decision and judgment herein, are unconstitutional and void on the ground that they are repugnant to Section 10 of Article I of the Constitution of the United States, in that said statute and authority impair the obligation of contracts between said Timothy B. Black-

stone and the United States Trust Company of New York and Cuyler, Morgan & Co. of New York.

4. That said statute of the State of New York, as interpreted by said decision and judgment, and the authority exercised under said statute, are unconstitutional and void on the ground that they are repugnant to Section 1 of Article IV. of the Constitution of the United States, in that said statute and authority deny full faith and credit in the State of New York to the public acts, records and judicial proceedings of the State of Illinois under which the inheritance, succession or transfer tax upon the property which was the subject of this cause had been duly assessed, levied and paid.

5. That said statute of the State of New York as interpreted by said decision and judgment, is unconstitutional and void on the ground that it is repugnant to Section 2 of Article IV. of the Constitution of the United States, in that said statute deprives the plaintiff in error and other citizens of Illinois, as well as citizens of other States, of certain privileges and immunities of citizens of the State of New York.

6. That said statute of the State of New York as interpreted by said decision and judgment, is unconstitutional and void on the ground that it is repugnant to Section 1 of Article XIV. of the Constitution of the United States, in that said statute abridges the privileges and immunities of the plaintiff in error, and of other citizens of the United States, deprives said citizens of their property without due process of law, and denies to said citizens the equal protection of the laws.

The defendants in error will urge that the act in regard to taxable transfers of property enacted by the Legislature of the State of New York, as interpreted by the decision and judgment now sought to be reviewed, is not susceptible to any of the above criticisms, but is in every respect a valid exercise by the State of New York of its taxing power.

POINTS.

I.

Whether the "deposits" made by the decedent with the Trust Company and Cuyler, Morgan & Co. be regarded as "money" within the State of New York belonging to him at the time of his death, or as a "debt" owing to him at that time by these "depositaries," the Court of last resort of that State has declared it to be the intention of the Legislature of that sovereignty to tax the succession to such money or credit although the decedent was at the time of his death a resident of Illinois.

I. The Statute Law of New York.

The law of New York relative to taxable transfers is a portion of the Tax Law of that State, embodied in Chapter 908 of the Laws of 1896, entitled "An Act in Relation to Taxation, Constituting Chapter 24 of the General Laws," which is a mere codification of the statute law as previously in force since 1885. Article X. of that act bears the caption "Taxable Transfers."

Section 220 of that act, as amended by Chapter 284 of the Laws of 1897 (which went into effect on April 16th, 1897), and which since that time has remained unchanged, so far as material, reads as follows:

"A tax shall be and is hereby imposed upon the the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein, or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases: 1. When the transfer is by will or by the inter-

state laws of this state from any person dying seized or possessed of the property while a resident of the state. 2. When the transfer is by will or intestate law of property within the state and the decedent was a non-resident of the state at the time of his death."

So far as this particular provision of the act is concerned it has not been materially changed since 1887.

By the New York Statutory Construction Law, which is Chapter 1 of the General Laws of the State and is applicable to every statute unless its general language or the context of the language construed, or other provisions of law, indicate that a different meaning or application was intended from that required to be given by the chapter, the following definitions are given:

"§ 2. Property. The term property includes real and personal property.

"§ 3. Real Property. The term real property includes real estate, lands, tenements and hereditaments, corporeal and incorporeal.

"§ 4. Personal Property. The term personal property includes chattels, money, things in action, and all written instruments themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or incumbrance in, to or upon property or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated wholly or in part, and everything except real property which may be the subject of ownership. The term chattels includes goods and chattels."

Section 2, Subdivision 4, of the Tax Law reads as follows:

"The terms 'personal estate' and 'personal property,' as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purchase of any real estate; public stock, stocks in moneyed corporations, and such portion of the capital stock of

incorporated companies, liable to taxation on their capital, as shall not be invested in real estate."

Section 242 provides:

"The words 'estate' and 'property' as used in this article, shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this article and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein, whether situated within or without this state. The word 'transfer' as used in this article shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed."

II. THE DECISIONS OF NEW YORK CONSTRUING THESE STATUTES:

These provisions and those which preceded them, of which they are simply re-enactments, and others in *pari materia*, have been adjudged to impose a tax upon the right of succession to the property of a decedent, and not upon a decedent's estate as such, and, in effect, to limit the power of testamentary disposition, and that legatees and devisees take their bequests and devises subject to this tax imposed upon the succession to property. In other words, it is a tax upon the right to take property by devise or descent.

Matter of Merriam, 141 N. Y., 479, 480.
Matter of Hoffman, 143 N. Y., 329, 331.
U. S. vs. Perkins, 163 U. S., 625, 628, 629.
Scholey vs. Rew, 23 Wall., 331, 348.
Magoun vs. Illinois Trust & S'vgs. Bk., 170 U. S., 283, 288.
Knowlton vs. Moore, 178, U. S., 41, 57, 59, 60.
Plummer vs. Coler, 178 U. S., 115, 121, 122.

The constitutionality of a tax on the succession to property has been uniformly recognized and is no

longer open to question, since the elaborate consideration which the subject received in the opinion of Mr. Justice McKenna in *Magoun vs. Illinois Trust & Savings Bank, 170 U. S., 283, 287, 288.*

The courts of New York have had occasion to frequently apply this statute to the succession to personal property of non-residents which at the time of the death of the decedent was within the State.

In *Matter of Romaine (127 N. Y., 80)*, which was decided in 1891 and arose under the Collateral Inheritance Act of 1885 providing that "all property which "shall pass by will or by the intestate laws of this "state from any person who may die seized or pos-"sessed of the same, or if such decedent was not a "resident of this state at the time of death, which "property or any part thereof shall be within this "state" shall be liable to a tax as prescribed, it was held that although Romaine was for ten years prior to his death a resident of and domiciled in the State of Virginia, securities consisting of stocks and bonds of different corporations and a mortgage upon real estate in the City of New York, kept by him in a box in a safe deposit company in the City of New York, and deposits kept by him in various savings banks in that city, were liable to taxation.

In the course of his opinion, which construed the statute, Judge Vann said:

"Where, however, the money of a non-resident is invested in this State, as it was by Mr. Romaine, in the bond and mortgage in question, and in the deposits made by him in the savings banks, or where the property of a non-resident is habitually kept, even for safety, in this State, we think that the statute applies both in the letter and spirit. Such property is within this State in every reasonable sense, receives the protection of its laws and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident. We think that a fair construction of the act permits no distinction as to such property, based simply upon the residence of the deceased owner. We have nothing to do with the policy of the statute, as our duty is dis-

charged when we declare its meaning and apply it to the case in hand."

In *Matter of Houdayer 150 N. Y., 37*, decided in 1896, it appeared that the decedent died at Trenton, New Jersey, where he had resided for a number of years. Many years before his death he had opened an account with the Farmers' Loan and Trust Company of the City of New York, in which he made deposits from time to time of moneys belonging to a trust estate, as well as moneys belonging to himself. This continued as an open running account until his death, when a large balance remained to his credit

The question arose as to whether or not this fund was properly within the State of New York with the meaning of the Taxable Transfer Act. The Appellate Division (*3 App. Div., 474*), held that it was not, on the ground that the relation existing between the trust company and the decedent was that of debtor and creditor. The Court of Appeals, however, decided that it was subject to taxation, recognizing the fact that although a deposit of money in a bank is technically a debt, it was still money for all practical purposes and as such came within the purview of the statute.

In announcing the decision of the Court, Judge VANN said :

" While a majority of my associates concur in the result reached by me, they do not all concur in the reasons given therefor. *They are of the opinion that a deposit of money in a bank, although technically a debt, is still money for all practical purposes and as such is taxable under the Transfer Tax Act.*"

The reasoning of Judge VANN which led to this result is so clear that it is deemed important to quote therefrom at length :

" What was the real thing, the essence of the transaction, that gives rise to the controversy? The decedent brought his money into this state, deposited it in a bank here, and left it here until it should suit his

convenience to come back and get it. While the commingling of funds may complicate administration it does not change the facts as thus stated. If he had deposited it *in specie*, to be returned *in specie*, there can be no doubt that the money would be property in this state subject to taxation. But, instead, he did as business men generally do, deposited his money in the usual way, knowing that, not the same, but the equivalent, would be returned to him upon demand. While the relation of debtor and creditor technically existed, practically he had his money in the bank and could come and get it when he wanted it. It was an investment in this state subject to attachment by creditors. If not voluntarily repaid, he could compel payment through the courts of this state. The depository was a resident corporation, and the receiving and retaining of the money were corporate acts in this state. Its repayment would be a corporate act in this state. Every right springing from the deposit was created by the laws of this state. Every act out of which those rights arose was done in this state. In order to enforce those rights, it was necessary for him to come into this state. Conceding that the deposit was a debt; conceding that it was intangible, still it was property in this state for all practical purposes, and in every reasonable sense within the meaning of the Transfer Tax Act *(In re Romaine*, 127 N. Y., 80, 89).

" While the distribution of the fund belongs to the state where the decedent was domiciled, as such distribution cannot be made until his administrator has come into this state to get the fund, possibly, after resorting to the courts for aid in reducing it to possession, the fund has a *situs* here, because it is subject to our laws. A reasonable test in all cases, as it seems to me, is this: Where the right, whatever it may be, has a money value and can be owned and transferred, but cannot be enforced or converted into money against the will of the person owing the right, without coming into this state, it is property within this state for the purposes of a succession tax. Thus the right in question is property, because it is capable of being owned and transferred. It is within this state, because the owner must come here to get it. It is subject to taxation, because it is under the control of our laws. It has a money value, because it is virtually money, or can be converted into money upon demand. It is subject to a transfer tax, because the passing, by gift or inheritance of 'all property, or interest therein,

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whether within or without this state, over which this state has any jurisdiction for the purposes of taxation, comes within the expressed intent of the legislature.

"I regard further discussion as unnecessary, as I have fully expressed my views as to the scope of the statute in the *Bronson* case, decided herewith."

The case cited was brought to this Court on a writ of error under the title of *Scudder vs. Comptroller of New York (175 U. S., 32)*, where the writ was dismissed for want of jurisdiction.

In the present case the Appellate Division of the First Department of the Supreme Court of the State of New York unanimously decided against the plaintiff in error on the authority of *Matter of Houdayer* (Rec., pp. 76, 77); and the Court of Appeals, without opinion, affirmed the order appealed from "on the "ground that this case is controlled by *Matter of* "*Houdayer, 150 N. Y., 37*" (Rec., p. 96), Judges HAIGHT and GRAY, who had dissented in the latter case, concurring in the decision in the present case.

The *Houdayer Case* was cited with approval in *Callahan vs. Woodbridge (171 Mass., 595)*, where a statute providing for a collateral legacy tax on property within the commonwealth, "whether tangible or "intangible," was applied to real estate within the State, and to cash and railroad bonds of other States which were deposited within the State of Massachusetts.

It was likewise cited in *Eidman vs. Martinez (184 U. S., 587)*, as was also *Matter of Romaine (supra)*.

Deposits in banks have been held assessable under this system of legislation in other cases.

Matter of Burr. 16 Misc. Rep., 89.
Matter of Morejon, N. Y. Law Journal, July 3, 1891.
Matter of Bondon, N. Y. Law Journal, March 1, 1892.
Estate of Spier, 6 Ohio Dec., 898.

The highest Court of New York has thus interpreted the statute now under consideration as providing that

where a non-resident dies leaving a deposit in a bank or trust company within the State of New York, a transfer by will or intestate law of such deposit is a transfer of money—"of property within the state," and as such is governed by the provision of *Section 220* of the *Tax Law.*

III. The Effect of the Interpretation by the New York Courts of its Tax Laws.

Without now considering the effect of such an interpretation upon the validity of the act, it is submitted that the construction by the Court of Appeals of New York of this statute is to be regarded as an authoritative declaration of what the law of New York is, which will be adopted by this Court under the principle announced in a multitude of cases, a few of which only need be cited.

"The construction given to a statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding upon the Courts of the United States as the text."

Leffingwell vs. Warren, 2 Black., 599, 603.

The meaning of a State statute declared by the highest Court of the State is conclusive upon this Court.

Randall vs Brigham, 7 Wall., 523, 541.

As was said by Mr. Justice Shiras in *Morley vs. Lake Shore Railway Co., 146 U. S., 167 :*

"If then, the law enacted by the legislature, and construed by the state judiciary, will be the law of the State, it follows that, as to the proper construction of the statute, and as to what should be regarded as among its terms, no Federal question could arise. The most that could be claimed would be that, although the statute of the State was unobjectionable, yet the State court had erroneously construed it. This would constitute a purely judicial error, involving no question of the validity of the law, which latter question alone is, by the plainest possible terms of the Consti-

tution and judiciary act, subject to investigation here. Assuming then, that the statute in question was correctly construed by the New York court, our only inquiry must be as to the validity of the statute itself as construed by the State court."

Thus, in *Burgess vs. Seligman (107 U. S., 33)*, Mr. Justice BRADLEY said:

"Since the ordinary administration of the law is carried on by the state courts, it necessarily happens that, by the course of their decisions, certain rules are established which become rules of property and action in the state, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of state constitutions and statutes. Such established rules are always regarded by the federal courts, no less than by the state courts themselves, as authoritative declarations of what the law is."

Flash vs. Conn., 109 U. S., 379.
Bucher vs. Cheshire R. R. Co., 125 U. S., 584.
German Bank vs. Franklin Co., 128 U. S., 538.
Amy vs. Watertown, 136 U. S., 318.
Gormley vs. Clark, 134 U. S., 348.
Detroit vs. Osborne, 135 U. S., 500.
Halstead vs. Buster, 140 U. S., 277.
Bauserman vs. Blunt, 147 U. S., 647.
Balkam vs. Woodstock, 154 U. S., 189.
Hartford Ins. Co. vs. Chicago Ry. Co., 175 U. S., 108.

In *Wade vs. Travis County (174 U. S., 499, 508)* Mr. Justice BROWN said:

"In determining what the laws of the several states are which will be regarded as rules of decisions we are bound to look not only at their constitutions and statutes, but at the decisions of their highest courts giving construction to them."

In *Williams vs. Eggleston (170 U. S., 311)* the principle was applied to the subject of taxation and the decision of the Supreme Court of Connecticut construing

the statute was followed, although it was by a divided Court. Mr. Justice BREWER said:

"It is true there was a division of opinion between the members of the state Supreme Court, but such division, although a close one, does not prevent the opinion of the majority from becoming the decision of the court, and as such conclusive upon us. When the state court decides that municipal corporations within the territorial limits of the state are subject to the control of the state legislature, and that its act in creating for certain purposes a new corporation and merging therein five separate towns was valid, this court cannot hold that the state court was mistaken in its construction of the state constitution or in its declaration as to the extent of the power of the legislature over municipal corporations. Neither can it be doubted that, if the state constitution does not prohibit, the legislature, speaking generally, may create a new taxing district, determine what territory shall belong to such district and what property shall be considered as benefited by a proposed improvement."

In *New Orleans vs. Stempel (175 U. S., 309, 316)*, Mr. Justice BREWER said:

"When the question is whether property is exempt from taxation and that exemption depends alone upon a true construction of the statute of the state, the federal courts should be slow to declare an exemption in advance of any decision by the courts of the state. The rule in such a case is that the federal courts follow the construction placed upon the statute by the state courts, and, in advance of such construction, they should not declare property beyond the scope of the statute and exempt from taxation unless it is clear that such is the fact. In other words, they should not release any property within the state from its liability to state taxation, unless it is obvious that the statutes of the state warrant such exemption or unless the mandates of the federal constitution compel it."

This principle has even been applied in cases where the jurisdiction of this Court has been invoked because of an asserted impairment of contract rights arising from the effect given to subsequent legislation, in respect to which the duty is imposed upon this Court to exer-

cise an independent judgment as to the nature and scope of the contract. But as was said by Mr. Justice WHITE in *Board of Liquidation vs. Louisiana (179 U. S., 622, 638)*,

"Nevertheless, when the contract, which it is alleged has been impaired, arises from a state statute, as said in Burgess vs. Seligman, 107 U. S., 20, 34, 'for the sake of harmony and to avoid confusion, the federal courts will lean toward an agreement of views with the state courts, if the question seems to them balanced with doubt.'"

In *Yazoo & Mississippi Val. R. R. Co. vs. Adams (181 U. S., 580, 583)*, which likewise involved a question as to whether the obligation of a contract had been impaired, Mr. Justice BROWN said:

"The right asserted depends upon a comparison and construction of such statutes; and the settled rule of this Court is that, even in a case where we may exercise an independent judgment, any reasonable doubt will be resolved in favor of that construction of the State statute which has been adopted by the court of last resort in that State."

In the present case it will be seen that the question of impairment of contract cannot legitimately arise since the decedent's deposits were made long after the enactment of the statute now under consideration, and after the decision in the Houdayer case.

IV. THE CORRECTNESS OF THE DECISION IN THE HOUDAYER CASE.

If, however, it became necessary to consider the soundness of the reasoning of Judge VANN in the *Houdayer Case*, which resulted in such interpretation, potent considerations might be urged in support thereof, especially on the facts as established in the present record.

1. For all practical purposes the deposits of the decedent which have been made the basis of the assessment of the tax under consideration were moneys within the State of New York.

Whatever the technical form of the transaction, speaking colloquially, Mr. Blackstone had deposited his money with the trust company and Cuyler, Morgan & Co. In the inventory of his estate, filed in Illinois, it was spoken of an "amount on deposit." In the inventory submitted by the Illinois appraiser it was spoken of as "Cash on deposit." In the correspondence between Mr. Blackstone and the trust company, the former spoke of "the price agreed upon" for his stock "if deposited with the United States Trust Company for my account." He further says: "If I sell "my stock I am at a loss to know how I can safely "invest the proceeds, and may wish to deposit a con- "siderable sum for several months with the U. S. "Trust Company." The Trust Company expresses its willingness to accept "on deposit for your account the "proceeds of such sale." And again: "In compliance "with your instructions these several amounts have "been deposited with this company to your individual "credit and as executor as per advices herewith" (Rec., pp. 57–60).

The money was carried by the Trust Company on its books as a "*deposit in trust.*"

The average citizen if called upon to describe the nature of his deposit in such an institution would invariably refer to it as so much cash or money on hand. He would carry it in his cash account, just as the answer in the present case, speaking of the deposit made by the decedent as trustee of the estate of H. B. Norton at the same time when he made his own deposit, says: that in the "case of the estate of "the said Henry B. Norton, deceased, he accom- "plished such permanent investment and *withdrew all* "*of said moneys* prior to his death, but that in the "case of his personal *funds*, owing to ill health he "was unable to find any satisfactory investment for "more than $192,000 of such deposit" (Rec., p. 9).

Special attention is called to *Bluefield Banana Co. vs. Board of Assessors (49 La. Ann., 43)*, and *Parker, Tax Collector vs. Strauss & Co. (49 La. Ann., 1173)*,

which were cited with approval in *New Orleans vs. Stempel* (*175 U. S., 314, 315*), and in the second of which cases the Court said :

" *The revenue act, in entire accordance with the conceded extent of the taxing power, taxes the movable property of a foreigner. We cannot hold that cash thus liable to taxation is exempted, because for convenience it is deposited in bank and checked on by the owner. It would be a strain to apply to the deposited cash the exemption from taxation accorded to debts in their ordinary significance, due to the foreign creditor.*"

There are obvious reasons for this view. The deposit of money in such institutions exacts from the State the provision of continual safe-guards, civil, police and military, for the benefit of the depositor.

For the protection of those leaving their money with banks and trust companies, the State of New York has devised an elaborate system of investigation, supervision and administration of institutions of this class.

Taxation is the correlative of protection, and is as applicable to a non-resident owner of property as to a resident owner.

2. The deposit with the United States Trust Company did not, however, partake of the nature of a general deposit, but was a special deposit in trust.

The charter of the United States Trust Company (Chap. 204, L. 1853, as amended) empowers the corporation :

" 1. To receive *moneys in trust*, and to accumulate " the same at such rate of interest as may be obtained " or agreed on, or to allow such interest thereon as " may be agreed on, not exceeding in either case the " legal rate."

Acting under this power, the money left with the trust company by Mr. Blackstone was entered in the ledger, entitled " Deposits in Trust. Draft Account " (Rec., p. 56).

The charter does not confer upon the trust company the general powers of a bank of deposit. It is a trustee, pure and simple. Hence, the relation existing between it and one depositing moneys with it, is not that of debtor and creditor, but of trustee and *cestui que trust.*

There is no doubt that when Mr. Blackstone delivered his shares of stock of the Chicago and Alton Railroad Company to the Trust Company the latter held them in a fiduciary capacity, and in view of the terms of the charter of the Trust Company it is difficult to appreciate that the latter was any the less a trustee as to the proceeds of such shares, when in accordance with the conditions of the sale, it was provided, that the price agreed upon should be deposited with the Trust Company for the account of Mr. Blackstone. If the shares had continued in the possession of the Trust Company until Mr. Blackstone died they surely would have been subject to taxation.

By what alchemy did the proceeds of these shares become non-taxable although they were left by Mr. Blackstone in New York for the purpose of reinvestment "to avoid the risk and expense of their transfer to Chicago and their probable retransfer to New York" when he had determined what permanent investment of them he should make? (Rec., p. 9).

In a recent case the Court of Appeals, speaking of trust companies organized under the laws of New York, said:

"It is very obvious that trust companies are not in a legal or commercial sense engaged in the business of banking."

Jenkins vs. Neff, 163 N. Y., 320, 330, affd. 186 U. S., 230, 234.

People vs. Binghampton Trust Co., 139 N. Y., 185, relied upon by the plaintiff in error has no application here. That action was one to recover a penalty on the theory that the defendant solicited or received deposits as a savings bank; and it was merely decided that it

had not violated the penal law. Judge GRAY made this clear when he said (p. 191):

"In discussing whether acts were in violation of law, I have, of course, had in mind the statutory prohibition or provision in the Section of the Banking Law referred to. I have not had reference to the statute under which the defendant is incorporated. We are not concerned with the question of whether it has violated any provision of its charter. That question is not here."

3. But treating the deposit of the proceeds of these shares of stock as an ordinary deposit, it is nevertheless believed that it was property of the decedent within the State of New York.

While under the law of New York in one sense the relation between a bank and a depositor is that of debtor and creditor, yet the relation is not that of a lender and borrower, but resembles in many of its aspects that of a bailor and bailee.

In *Downes vs. Phœnix Bank of Charlestown (6 Hill, 297)* Mr. Justice BRONSON said:

"It is not strictly a deposit, nor a bailment of any kind; for the same thing is not to be returned, but another thing of the same kind and of equal value. In the civil law it is called a *mutuum*, or loan for consumption. Except where the deposit is special, the property in the money deposited passes to the bank, and the relation of debtor and creditor is created between the parties. Still the commonly received opinion is, that the banker cannot be sued for the money until after the customer has drawn for it, or in some other way required its repayment. Mr. Justice STORY says, 'the bank is to restore the money whenever it is demanded.' * * * Here the contract to be implied from the usual course of the business is, that the banker shall keep the money until it is called for. *Although it is not strictly a bailment, it partakes in some degree of that character. That is enough to distinguish it from the ordinary case of a debt payable on demand,* though it must be admitted that the distinction is not a very strong one."

In *Payne vs. Gardiner (29 N. Y., 146)*, Mr. Justice MULLIN said:

"A deposit of money with a bank of private person is what is known in the civil law as a *mutuum* or irregular deposit—the distinction between the two kinds of deposit not being recognized by the common law. When money is borrowed and no time of payment is fixed by the contract of loan, the debt, as already stated, is instantly due, and an action may be brought, without demand—the bringing of the action being a sufficient demand to entitle the lender to recover. Even if the debt is by the terms of the agreement to be paid on demand, yet no special demand is necessary; the money being due without it. In the cases of deposits, however, a demand was, by the civil law, and is now, by our law, absolutely essential to a right of action, unless there was a wrongful conversion, or some loss by gross negligence on the part of the depositary. In the case of a *mutuum* or irregular deposit, a demand was necessary to perfect the liability of the depositary. It is said by Pothier (see his work on Contracts, by Evans, 2 Vol. 126): 'When a man deposits money in the hands of another, to be kept for his use, *the possession of the custodian ought to be deemed the possession of the owner* until an application and refusal, or other denial of the right; for, until then, there is nothing adverse, and I conceive, that upon principle, no action should be allowed in these cases, without a previous demand—consequently, that no limitation should be computed further back that such demand.' * * * I entertain no doubt but that the transaction in question was a deposit, and that the rights and liabilities of the parties are precisely the same as if the money had been in a bank."

In *Howell vs. Adams (68 N. Y., 321)* Judge ANDREWS said:

"The fact that a certificate is given on a deposit being made, payable on the return of the certificate, instead of leaving the deposit subject generally to check or draft, does not change the reason of the rule that a banker must first be called upon for payment before an action can be maintained."

In *Munger vs. Albany City National Bank (85 N. Y., 587)* Chief-Judge FOLGER said:

"But the authorities in this state are, that no right of action exists against a depositary of money until an actual demand of it, and that such is the case, though it is in the power of the owner of the deposit to make it due and payable at any time by his own act of making the demand."

In *Boughton vs. Flint (74 N. Y., 482)* Judge RAPALDO said:

"We think that the transaction amounted to a simple deposit upon which the statute would not begin to run until a demand and refusal to pay, or some equivalent act. The money was not loaned to the testator at his request, but was being kept by him for his wife at her request, and he was not in default in not paying it over until she should demand it, as he was requested to keep it until then. *For the same reason he was not chargeable with interest thereon, without a special agreement.*"

In *Smiley vs. Fry (100 N. Y., 265)*, Judge MILLER said:

"Being a deposit, a demand of the money was essential to a right of action, unless there was a wrongful conversion or loss by some gross negligence on the part of the depositary. The distinction between a deposit and a loan is considered in *Payne v. Gardiner (29 N. Y., 146)*, and within the rule there laid down the instrument in question was a certificate of deposit, and, in such a case, *no indebtedness arose by reason of such deposit until a demand was made for the amount deposited.*"

To the same effect are

Dickinson vs. Bank, 152 Mass., 49, 55.
Girard Bank vs. Penn Township Bank, 39 Pa. St., 92, 98, 99.
U. S. vs. Wardwell, 172 U. S., 48, 54, 55.

Especial attention is once more called to *Parker, Tax Collector vs. Strauss & Co., 49 La. Ann., 1173,*

cited with approval and followed in *New Orleans vs. Stempel, 175 U. S., 314, 315.*

4. Again, treating this fund as a debt; for all practical purposes it was property within the State of New York.

(a) Under the law of New York, debts owing by a resident of the State to a non-resident are attachable in an action brought against the latter, and the domicile of the debtor is treated as the *situs* of the property.

Section 649 of the Code of Civil Procedure, provides that a levy under a warrant of attachment, is to be made upon personal property not capable of manual delivery by leaving a certified copy of the warrant and a notice showing the property attached with the person holding the same, "or, if it consists of a demand other than as specified in the last subdivision, with the person against whom it exists."

Accordingly, in *Dunlop vs. Paterson Fire Ins. Co. (12 Hun, 627; affd. 74 N. Y., 145)* money deposited with the Clerk of a Court in lieu of an undertaking on appeal by a foreign corporation was held to be liable to an attachment in an action by a third person against the depositor, even though a Receiver of the corporation had been appointed in another State.

In *Douglas vs. Phœnix Ins. Co. (138 N. Y., 209)* while it was held that the law of a state cannot make a debtor who is actually a non-resident a resident by so declaring, at least so as to bind another jurisdiction by the declaration, yet Chief Judge ANDREWS said:

"But it is a fundamental rule that in attachment proceedings the *res* must be within the jurisdiction of the court issuing the process in order to confer jurisdiction. In the case of moveables their seizure under the attachment shows that their actual *situs* is within the jurisdiction. But in respect to tangible interests, debts, choses in action, bonds, notes, accounts, interes to in corporate stocks and things of a similar nature the question whether the *res* is within the jurisdiction of the sovereignty where the process is issued, is not so readily determined. The general is well settled that the *situs* of debts and obligations is at the domicile of the creditor. But the attachment laws of our

own and other states recognize the right of a creditor of a non-resident to attach a debt or credit owing or due to him by a person within the jurisdiction where the attachment issues, and to this extent the principle has been sanctioned that the laws of a state, for the purposes of attachment proceedings, may fix the *situs* of a debt at the domicile of the debtor."

Embree vs. Hanna, 5 Johns., 100.
Williams vs. Ingersoll, 89 N. Y., 508, 529.

This case was followed in *Carr vs. Corcoran (44 App. Div., 97);* and in *Simpson vs. Jersey City Contracting Co. (165 N. Y., 193)* it was decided that where certificates of stock of a foreign corporation belonging to a non-resident are in possession of a resident of New York as security for a debt, the interest of the owner and pledgor therein is a property right within the State which may be levied upon under a warrant of attachment against him in the manner prescribed by Subdivision 3 of Section 649 of the Code of Civil Procedure.

This doctrine has recently received recognition by this Court in *Chicago, Rock Island and Pacific Railway Company vs. Sturm, 174 U. S., 710,* where the question arose as to the right of an Iowa Court to reach by attachment a debt owing by a resident of that State to a resident of Kansas, in proceedings *in rem* instituted against the latter. The Supreme Court of Kansas held that it could not be done, because the situs of the debt was either with the owner thereof, or at his domicile, or where the debt was to be paid, and that the situs of the property in a debt can be changed only by the change of location of the creditor, who is the owner thereof, or with his consent. But that conclusion was reversed by this Court in an opinion by Mr. Justice McKenna, who made the following remarks, which are most pertinent to this case (pp. 714–716):

"The primary proposition is that the situs of a debt is at the domicile of a creditor, or, to state it negatively, it is not at the domicile of the debtor. The proposition is supported by some cases; it is opposed by others. Its error proceeds, as we conceive, from confounding

debt and credit, rights and remedies. The right of a creditor and the obligation of a debtor are correlative but different things, and the law, in adopting its remedies for or against either, must regard that difference. Of this there are many illustrations, and a proper and accurate attention to it avoids misunderstanding. This court said, by Mr. Justice GRAY, in *Wynan vs. Halstead, 109 U. S., 654, 656 : ' The general rule of law is well settled, that for the purpose of founding administration, all simple contract debts are assets at the domicile of the debtor.'* And this is not because of defective title in the creditor or in his administrator, but because the policy of the State of the debtor requires it to protect home creditors (*Wilkins vs. Ellett, 9 Wall., 740 ; 108 U. S., 256*). *Debts cannot be assets at the domicile of the debtor, if their locality is fixed at the domicile of the creditor* and if the policy of the State of the debtor can protect home creditors through administration proceedings, same policy can protect home creditors through attachment proceedings. For illustrations in matters of taxation see *Kirkland vs. Hotchkiss, 100 U. S., 491; Pullman's Car Co. vs. Pennsylvania, 141 U. S., 18 ; Savings and Loan Society vs. Multnomah County, 169 U. S., 421.* Our attachment laws had their origin in the Custom of London, Drake, § 1. Under it a debt was regarded as being where the debtor was, and questions of jurisdiction were settled on that regard. In *Andrews vs. Clarke, 1 Carthew, 25*, Lord Chief Justice HOLT summarily decided such a question and stated the practice under the custom of London. * * * The idea of locality of things which may be said to be intangible is somewhat confusing, but if it be kept up the right of the creditor and the obligation of the debtor cannot have the same unless debtor and creditor live in the same place. But we do not think it is necessary to resort to the idea at all, or to give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due, and might be paid to a non-resident to the defeat of his creditors. *To do it he must go to the domicile of his debtor, and can only do it under the laws and procedure in force there.* This is a legal necessity and considerations of situs are somewhat artificial. If not artificial whatever of substance there is must be with the debtor. He and he only has something in his hands. That something is the *res*, and gives char-

acter to the action as one in the nature of a proceeding *in rem.*"

(b) Before this fund could be distributed at the place of the decedent's domicile, such distribution could only be made through the aid of the New York courts by means of administration there, of the debt owing to the decedent; and title was, therefore, derivable through such administration.

The rule is established by a uniform line of authorities that an executor or administrator appointed in one State cannot as such sue, or be sued, in his representative capacity in another.

Such are the decisions in New York, as is evidenced by the opinion of Judge FINCH in *Hopper vs. Hopper (125 N. Y., 402)*, where it was said:

"By the phrase 'foreign executor' the courts never mean the mere non-residence of the individual holding the office, but the foreign origin of the representative character. That is the sole product of the foreign law, and, depending upon it for existence, cannot pass beyond the jurisdiction of its origin. The individual may come here and acquire rights or incur liabilities which our tribunals will defend or enforce, but he can have no representative rights or liabilities since we recognize in him no representative character. The foreign executor may make a contract here which our courts will compell him to perform because it is his contract, but where it is the testator's only, he cannot sue or be sued upon it, since the right or the liability is purely representative and exists only by force of the official character, and so cannot pass beyond the jurisdiction which gave it. And thus it is not the residence of the executor out of the state which makes him a foreign executor, but the creation of his official character under and by force of a law foreign to our own."

To the same effect are numerous other New York cases, from among which we select the following:

Lawrence vs. Lawrence, 3 Barb., Ch. 74.
Matter of Webb, 11 Hun, 124.
Flandrow vs. Hammond, 13 App. Div., 325.
Johnson vs. Wallis, 112 N. Y., 230.

So in *Petersen vs. Chemical Bank, 32 N. Y., 22, 40, 42*, Chief-Judge DENIO said:

"A foreign executor or administrator (and one appointed under the laws of a sister state of the Union is foreign in the sense of the rule), cannot sue in his representative character in the courts of this state. * * * It is very clear in the first place, that neither an executor or administrator, appointed in a foreign political jurisdiction, can maintain a suit in his own name in our courts. Foreign laws have no inherent operation in this state; but it is not on this account solely or principally that we deny foreign representatives of this class a standing in our courts. * * * Accordingly, it is a necessary supplement to the doctrine that, if the law-making power of the state where the property happens to be situated, *or the debtor of the deceased reside*, to subserve its own policy, has engrafted qualifications or restrictions upon the rights of those who would succeed to the estate by the law of the domicile, they just take their rights subject to such restrictions. One of the most natural, as well as the most usual of these qualifications is that which is intended to secure the creditors of the deceased, residing in the country where the assets exist. It is in part to subserve this policy that the personal representatives are not permitted to prosecute the debtor or parties who withhold his effects in our courts."

It may be added that another of these qualifications is the requirement to pay a succession tax based on the amount of the debt, which is transferred through the medium of the courts of the state in which the debtor of the decedent resides.

See *Greves vs. Shaw, 173 Mass, 205; S. C., 53 N. E., Rep. 372*, and quotations from the opinion of Mr. Justice KNOWLTON, under Point III., subd. 3.

Such is also the law of Illinois, as is indicated by the decision in *Judy vs. Kelley (11 Ill., 211)*, where it was held that a grant of administration in one country confers on an administrator no title to the property of the intestate situate in another country; that he has no authority over, nor is he responsible for, any effects of the estate that may be beyond the jurisdiction appointing him; that such administrator, in his official

capacity, can neither sue nor be sued out of the country from which he derives his authority, and to which he is alone amenable, and that if he wishes to reach property or collect debts belonging to the estate in a foreign country, he must obtain letters of administration, and give such security, and become subject to such regulations as its laws may prescribe.

This decision was followed in *McGarvey vs. Darnall (134 Ill., 367; s. c. 25 N. E. Rep., 1005).*

This principle has received the sanction of this Court in a number of cases. Thus in *Johnson vs. Powers (139 U. S., 156)* a bill in equity was filed in the Circuit Court of the United States for the Northern District of New York by Johnson, a citizen of Michigan, in behalf of himself and of all other persons interested in the administration of the estate of one Stewart, late of Detroit, against several citizens of New York who were alleged to hold real estate in New York under conveyances made by Stewart in fraud of his creditors. The only evidence that the plaintiff was either administrator or a creditor was a duly certified copy of the record of the Probate Court of Michigan showing his appointment by that Court as administrator; the subsequent appointment by that Court of commissioners to receive and adjust claims of creditors, and the report of the commissioners allowing several claims, including one of the plaintiff.

It was held that as a foreign administrator the plaintiff could not maintain the action, and that the adjudication in the probate proceedings as to the plaintiff's status as a creditor was no evidence of debt in the suit brought by him in New York against third persons having assets of the deceased. Mr. Justice GRAY said:

"* * * The letters of administration granted to him in Michigan confer no power beyond the limits of that state, and cannot authorize him to maintain any suit in the courts, either state or national, held in any other state. *Stacy vs. Thrasher, 6 How., 44, 58; Noonan vs. Bradley, 9 Wall., 394.* * * * A judgment recovered against the administrator of a deceased

person in one state is no evidence of debt, in a subsequent suit by the same plaintiff in another state, either against an administrator, whether the same or a different person, appointed there, or against any other person having assets of the deceased."

The case of *Stacy vs. Thrasher* is then cited, and referring to it, Mr. Justice GRAY proceeds:

"In answering the objection that to apply these principles to a judgment obtained in another state of the Union would be to deny it the faith and credit, and the effect, to which it was entitled by the Constitution and laws of the United States, he observed that it was evidence, and conclusive by way of estoppel, only between the same parties, or their privies, or on the same subject matter when the proceeding was *in rem;* and that the parties to the judgments in question were not the same; neither were they privies, in blood, in law or by estate, and proceeded as follows: 'An administrator under grant of administration in one state stands in none of these relations to an administrator in another. Each is privy to the testator and would be estopped by a judgment against him; but they have no privity with each other, in law or in estate. They receive their authority from different sovereignities and over different property. The authority of each is paramount to the other. Each is accountable to the ordinary from whom he receives his authority. Nor does the one come by succession to the other into the trust of the same property, encumbered by the same debts.'"

To the same effect are the following cases:

Vaughan vs. Northrup, 15 Pet., 1.
Aspden vs. Nixon, 4 How., 467.
Reynolds vs. Stockton, 140 U. S., 254, 272.
Lawrence vs. Nelson, 143 U. S., 222.
Overby vs. Gordon, 177 U. S., 222.

Particular attention is directed to *Wyman vs. Halstead, 109 U. S., 654, 656,* and *Chicago, Rock Island, &c., Ry. vs. Sturm, 174 U. S., 714.*

These authorities are the more important in view of the opinion expressed in *Minot vs. Winthrop, 162 Mass., 113,* and *Frothingham vs. Shaw, 175 Mass., 59, 61,* that a tax of the kind now under consideration "has some

of the characteristics of a duty on the administration of the estates of deceased persons."

Such duties are levied in respect of the control which every government has over property within its jurisdiction, irrespective of the domicile of the decedent.

Laidley vs. Lord Advocate, 15 App. Cases, 468, 483.
Hanson on Death Duties, 2, 63.

II.

If the funds deposited with the Trust Company and Cuyler, Morgan & Co. are to be regarded as money of the decedent within the State, in accordance with the decision in the Houdayer case, then no question as to the validity of the tax can arise, since it must be conceded that it was within the power of the N. Y. Legislature to place a succession tax upon the tangible property within the State of a non-resident decedent.

Callahan vs. Woodbridge, 171 Mass., 595.
In re Romaine, 127 N. Y., 80.
Matter of Whiting, 150 N. Y., 27.
Alvany vs. Powell, 2 Jones Eq., 51.
Cases cited under Point III.

If this proposition is sound, as it is believed to be, it is unnecessary to pursue the argument further. But inasmuch as the plaintiff in error has persisted in treating the deposits as a debt, and not as money, we will proceed to consider the case in that aspect.

III.

Assuming then that the Legislature of New York intended to bring within its taxing power deposits made with residents of New York by non-residents for the purposes of assessing a succession tax upon the estate of the latter, as declared in the Houdayer case, the practical question arises as to whether or not it is within the power of such Legislature to create a situs for such property within the sovereignty of New York for purposes of taxation. We confidently assert that it is.

It is doubtless true that under the legal fiction embodied in the maxim *mobilia personam sequuntur* personal estate is deemed to have no *situs* separate from the person or residence of the owner, and it is on the basis of this maxim that it is claimed that debts and choses in action can have no *situs* other than that of the creditor.

This fiction is not, however, superior to the legislative power and has been so frequently disregarded in legislation that it has become practically exploded This is illustrated by the attachment laws, to which reference has already been made. and is demonstrated by a long line of decisions in various jurisdictions affecting the subject of taxation.

1. New York Decisions.

So long ago as 1861 Chief Judge Comstock, said in *People ex rel. Hoyt vs. Commissioners of Taxes (23 N. Y., 224) :*

" It is said, however, that personal estate by a fiction of law has no *situs* away from the person or residence of the owner, and is always deemed to be pres-

ent with him at the place of his domicile. The right to tax the relator's property situated in New Orleans and New Jersey rests upon the universal application of this fiction ; and it is accordingly insisted upon as an absolute rule or principle of law which, to all intents and purposes, transfers the property from the foreign to the domestic jurisdiction, and thus subjects it to taxation under our laws. Let us observe to what results such a theory will lead us. The necessary consequence is, that goods and chattels actually within this state are not here in any legal sense, or for any legal purpose, if the owner resides abroad. They cannot be taxed here because they are with the owner who is a citizen or subject of some foreign state. On the same ground, if we were to. have harmonious rules of law, we ought to relinquish the administration of the effects of a person resident and dying abroad, although the claims of domestic creditors may require such administration. So, in the case of the bankruptcy of such a person, we should at once send abroad his effects, and cannot consistently retain them to satisfy the claims of our own citizens. Again, we ought not to have laws for attaching the personal estate of non-residents, because such laws necessarily assume that it has a *situs* entirely distinct from the owner's domicile. Yet we do in certain cases administer upon goods and chattels of a foreign decedent ; we refuse to give up the effects of a bankrupt until creditors here are paid ; and we have laws of attachment against the effects of non-resident debtors. These, and other illustrations which might be mentioned, demonstrate that the fiction or maxim *mobilia personam sequuntur* is by no means of universal application. Like other fictions, it has its special uses. * * * Accordingly there seems to be no place for the fiction of which we are speaking in a well adjusted system of taxation."

In *People ex rel. Westbrook vs. Board of Trustees of the Village of Ogdensburgh* (*48 N. Y., 390*) it was held that where at the time of the making out of an assessment roll the agent of a non-resident has moneys belonging to his principal on deposit in bank, it is liable to be assessed and taxed ; and that money due upon a contract for the sale of lands, where such contract belongs to a non-resident, is likewise assessable.

Speaking of these obligations, EARL, C., said:

"And while, for some purposes in the law, by legal fiction, it follows the person of the creditor and exists where he may be, yet it has been settled that for the purpose of taxation this legal fiction does not, to the full extent, apply, and that such property belonging to a non-resident creditor may be taxed in the place where the obligations are held by his agent."

In *Matter of Romaine, 127 N. Y., 80. 86,* Judge VANN said:

"The fiction of law that personal estate has no *situs* away from the person or residence of its owner is done away with, to a limited extent and for a specified purpose, and the truth is substituted in its stead as the rule of action. That the legislature had the power to do this can hardly be questioned (Matter of McPherson, 104 N. Y., 306). As was said by Judge STORY when writing upon this subject: 'A nation within whose territory any personal property is actually situated has as entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situated there' Conflict of Laws, §550). In People *ex rel.* Hoyt v. Commissioners of Taxes (23 N. Y., 224, 228), Judge COMSTOCK quotes with approval the foregoing extract, and adds: 'I can think of no more just and appropriate exercise of the sovereignty of a state or nation over property situated within it and protected by its laws, than to compel it to contribute toward the maintenance of government and law. Accordingly there seems to be no place for the fiction of which we are speaking in a well adjusted system of taxation.'"

In *People ex rel. Jefferson vs. Smith 88 N. Y., 576, 581,* Judge EARL said:

"That choses in action can have a *situs* away from the domicile of the owner for the purpose of taxation and for other purposes, is frequently manifested in the statutes of this state. * * * The debts here mentioned are choses in action and, according to the contention of these assessors, could have an existence only at the domicile of the creditor, and, whether he lived in this country or in Europe, could make no difference with the legal fiction; and yet that it was

the legislative intent that such debts for the purpose of taxation can have an existence away from the domicile of the owner cannot be questioned. * * * From these citations I think it may safely be said that the legal fiction that choses in action always attend the owner and have a legal existence only at the place of his domicile has been frequently ignored by the legislature in framing our system of taxation, and that it cannot be resorted to as a safe guide in the construction of the provision of the statute now under consideration."

Accordingly it was held that where a resident of this State was assessed for personal property which consisted of mortgage securities in the hands of his agents residing in other States, who retained the custody of the securities from the time they were taken and received, and reinvested the interest paid thereon, and upon payment of any security, under authority given them by their principal, discharged such security, they were not personal estate "within this state" within the meaning of the New York Statute in relation to taxation.

The case of *Kirkland vs. Hotchkiss (100 U. S., 491)*, was reviewed, and speaking of it Judge EARL said:

"In the United States Supreme Court, the only question considered, was whether the federal constitution prohibits a state from taxing in the hands of one of its resident citizens a debt held by him against a resident of another state, and evidence by the bond of the debtor secured by deed of trust or mortgage upon real estate situated in the state in which the debtor resides, and it was held that it did not. It was also held in very broad terms, that for the purpose of taxation, a debt has its *situs* at the residence of the creditor and may be there taxed. The doctrine as thus announced was sufficiently accurate for the decision of that case, and there is nothing in the language of the opinion from which it can be inferred that the court meant to decide that a debt must always be taxed at the domicile of the creditor and not elsewhere. It would have been a more accurate statement of the doctrine to say that a debt *may* have its *situs* at the residence of the creditor and *may* be there taxed, and

the doctrine as thus stated is sufficient for the decision of that case."

Similar comments were made upon *Kirkland vs. Hotchkiss* by Mr. Justice GRAY in Savings Society vs. Multnomah County, 169 U. S., 421, as is indicated by the quotation which appears below.

In *Matter of Whiting* (*150 N. Y., 30*), Judge VANN said :

" When the design of the legislature is to tax the transfer of everything that it has power to tax, there is no insistency in taxing in one form if another is not available. Indeed, perfect consistency is not always practicable in a scheme of taxation that is intended to let nothing escape that can be owned or transferred. Thus the legislature intended, as I think, to repeal the maxim *mobilia personam sequuntur*, so far as it was an obstacle, and to leave it unchanged, so far as it was an aid, to the imposition of a transfer tax upon all property in any respect subject to the laws of this state. I think this intention plainly appears from the history of legislation upon the subject, the decisions of the courts, some of them in effect repealed, and from the sweeping language of the statute, which subjects everything that can be owned in this state to a succession tax, except so far as expressly exempted. The legislature possessed and exercised the power to employ the maxim when necessary, and to disregard it when necessary to attain that object."

2. DECISIONS OF THIS COURT.

In *Hervey vs. R. I. Locomotive Works* (*93 U. S., 664, 671*) Mr. Justice DAVIS said :

" It was decided by this court, in *Greeen v. Van Buskirk, 5 Wall., 307 ; 7 Id., 139*, that the liability of property to be sold under legal process, issuing from the courts of the state where it is situated, must be determined by the law there, rather than that of the jurisdiction where the owner lives. These decisions rest on the ground that every state has the right to regulate the transfer of property within its limits, and that whoever sends property to it impliedly submits to the regulations concerning its transfer in force there, although a different rule of transfer prevails in the jurisdiction where he resides. *He has no absolute right to have*

the transfer of property, lawful in that jurisdiction, respected in the courts of the state where it is found, and it is only on a principal of comity that it is ever allowed. But this principle yields when the laws and policy of the latter state conflict with those of the former."

To the same effect are

Warner vs. Jaffray, 96 N. Y., 254, 255.
Walworth vs. Harris, 129 U. S., 365.
Security Trust Co. vs. Dodd, 173 U. S., 628.

In *Pullman's Car Co. vs. Pennsylvania* (*141 U. S., 18, 22*), Mr. Justice GRAY said:

" No general principles of law are better settled, or more fundamental, than that the legislative power of every state extends to all property within its borders, and that only so far as the comity of that state allows can such property be affected by the law of any other state. The old rule, expressed in the maxim *mobilia sequuntur personam*, by which personal property was regarded as subject to the law of the owner's domicile, grew up in the Middld Ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. In modern times, since the great increase in the amount and variety of personal property, not immediately connected with the person of the owner, that rule has yielded more and more to the *lex situs*, the law of the place where the property is kept and used. *Green v. VanBuskirk, 5 Wall., 139; Harvey v. R. I. Locomotive Works, 93 U. S., 664; Harkness v. Russell, 118 U. S., 663, 679; Walworth v. Harris. 129 U. S., 335; Story on Conflict of Laws, § 550; Wharton on Conflict of Laws, §§ 297–311.* * * *

" *For the purpose of taxation, as has been repeatedly affirmed by this court, personal property may be separated from its owner; and he may be taxed, on its account, at the place where it is, although not the place of his own domicile, and even if he is not a citizen or a resident of the state which imposes the tax. Lane County v. Oregon, 7 Wall., 71, 77; Railroad Co. v. Pennsylvania, 15 Wall., 300, 323, 324, 328; Railroad Co. v. Peniston, 18 Wall., 5, 29; Tappan v. Merchants' Bank, 19 Wall., 490, 499; State Railroad Tax Cases, 92 U. S., 575, 607, 608; Brown v. Houston, 114 U. S.,*

622; Coe v. Errol, 116 U. S., 517, 524; Marye v. Baltimore & Ohio R. R., 127 U. S., 118, 123."

In *Savings Society vs. Multnomah County (169 U. S., 421)* the Legislature of Oregon taxed mortgages of lands in the State to the mortgagees in the county where the land was situated. It was held that the act was not unconstitutional as applied to mortgages owned by citizens of other States and in their possession outside of the State of Oregon.

By the law of Oregon a mortgage of real property does not convey the legal title to the mo tgagee, but creates only a lien or incumbrance as security for the mortgage debt; and the right of possession, as well as the legal title, remains in the mortgagor, both before and after condition broken, until foreclosure (p. 426).

Mr. Justice GRAY, after making this statement, said:

"The authority of every state to tax all property, real and personal, within its jurisdiction, is unquestionable (*McCulloch v. Maryland, 4 Wheat., 316, 429*). Personal property, as this court has declared again and again, may be taxed, either at the domicile of its owner or at the place where the property is situated, even if the owner is neither a citizen nor a resident of the state which imposes the tax. A state may tax real estate mortgaged, as it may all other property within its jurisdiction, at its full value. It may do this, either by taxing the whole to the mortgagor or by taxing to the mortgagee the interest therein represented by the mortgage, and to the mortgagor the remaining interest in the land. And it may, for the purpose of taxation, either treat the mortgage debt as personal property, to be taxed, like other choses in action, to the creditor at his domicile; or treat the mortgagee's interest in the land as real estate, to be taxed to him, like other real property at its *situs*. * * * In *Kirkland v. Hotchkiss, 42 Conn., 426*, affirmed by this court in *100 U. S., 491*, the point adjudged was that debts to persons residing in one state, secured by mortgage of land in another state, might, for the purposes of taxation, be regarded as situated at the domicile of the creditor. But the question whether the mortgage could be taxed there only, was not involved

in the case, and was not decided, either by the Supreme Court of Connecticut or by this court. * * * The statute of Oregon, the constitutionality of which is now drawn in question, expressly forbids any taxation of the promissory note, or other instrument of writing which is the evidence of the debt secured by the mortgage ; and, with equal distinctness provides for the taxation, as real estate, of the mortgage interest in the land. Although the right which the mortgage transfers in the land covered thereby is not the legal title, but only an equitable interest and by way of security for the debt, it appears to us to be clear upon principle, and in accordance with the weight of authority, that this interest, like any other interest legal or equitable, may be taxed to its owner (whether resident or non-resident) in the state where the land is situated, without contravening any provision of the Constitution of the United States."

Chicago, Rock Island & Pacific Ry. Co. vs. Stearm, 174 U. S., 714, considered at length under Point I., subd. IV., 3*a*, is very much in point.

In *New Orleans vs. Stempel* (*175 U. S., 309*), the constitutionality of a Louisiana statute, as interpreted by the Supreme Court of that State, was involved. By the terms of the act it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation. It was declared :

" This shall apply with equal force to any person or " persons representing in this state business interests, " that may claim a domicile elsewhere, the intent and " purpose being that no non-resident, either by him- " self or through any agent, shall transact business here " without paying to the state a corresponding tax with " that exacted of its own citizens ; and all bills receiv- " able, obligations or *credits* arising from the business " done in this state are hereby declared assessable " within this state and at the business domicile of said " non-resident, his agent or representative."

Defendant, who was domiciled in the City of New York, was the owner of credits which were evidenced

by notes secured by mortgages on real estate in New Orleans. These notes and mortgages were in the City of New Orleans, in the possession of an agent who collected the interest and principal as they became due and deposited them in the bank in New Orleans to her credit. It was held that such taxation did not violate the Federal Constitution.

The action was brought to restrain the collection of taxes levied on personal property, which the appellee claimed was exempt from taxation. She was a resident of New York. The assessment was of $15,000 "money in possession, on deposit, or in hand," and of $800,000 "money loaned on interest, all credits and all bills receivable for money loaned or advanced, or for goods sold, and all credits of any and every description. The principal contention of the appellee was that the situs of the loans and credits was in New York, her domicile, and therefore being loans and credits without the State of Louisiana were not subject to taxation therein. The question to be decided was stated as follows:

"Under the circumstances disclosed by the testimoney, were the money and credits subject to taxation? * * * The question, therefore, is distinctly presented whether, because the minors were domiciled in New York, the moneys so deposited in a bank within the limits of the State of Louisiana, and the debts secured by mortgages as treated and held as above described were free from taxation in the latter State." * * *

Mr. Justice BREWER, after quoting the statute, calls attention to a number of cases decided by the Supreme Court of Louisiana in which the act had been construed, among others *Clason vs. New Orleans*, (*46 L. A., 1*), and then proceeds:

"This decision was, however, qualified in *Bluefield Banana Company vs. Board of Assessors. 49 La. Ann. 43*, the court there saying that the decision rested upon the special facts of that case; that there was really no general deposit, but that the local bank was simply a medium through which the funds of the nonresident kept at the place of his residence were drawn

against for the purpose of making payments in Louisana, and in this latter case it was held that, where a non-resident had an agent in New Orleans who disposed of the property of his principal as it was forwarded in the course of business and deposited the proceeds thereof in bank to the credit of his principal, the sum thus deposited was subject to taxation. This is the language of the court after its reference to the *Clason case* (*supra*, page 48).

"The case is different here. The foreign corporation had an agent here, where it received and where it sold fruit and received the price for the same. Part of the proceeds were withheld in the hands of the agents for purposes incidental to the prosecution of its business, and part deposited to the credit of the company, subject to the check of its local agent, also for the prosecution of its business here, and for such other purposes as the company might direct it to be applied to. The company transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the state and city governments which residents received, and we see no reason why it should not be taxed, as claimed in this proceeding, unless there be insuperable legal objections in the way. We find a statute of the state, which by its terms brings them under the operation of state and city taxation, and we are bound to give effect to its provisions unless they be in derogation of the Constitution. The unconstitutionality of the act is not pleaded, and we, of ourselves, see no unconstitutional features in it. The rule *mobilia sequuntur personam* is a fiction of the law, not resting of itself upon any constitutional foundation, and which gives way before express laws, destroying it in any given case where constitutional requirements themselves do not stand in the way.

"This was reaffirmed in *Parker, Tax Collector v. Strauss & Co., 49 La. Ann., 1173*, in which the court says (page 1175):

"'The revenue act, in entire accordance with the conceded extent of the taxing power, taxes the movable property of a foreigner. We cannot hold that cash thus liable to taxation is exempted, because for convenience it is deposited in bank and checked on by the owner. It would be a strain to apply to the deposited cash the exemption from taxation accorded to debts in their ordinary significance, due to the foreign creditor.' * * *

"From this review of the decisions of the Supreme Court of the State it is obvious that moneys, such as those referred to, collected as interest and principal of notes, mortgages and other securities kept within the State and deposited in one of the banks of the State for use or reinvestment, are taxable under the act of 1890. They are property arising from business done in the State; they are tangible property when received by the agent of the plaintiffs, and as such subject to taxation, and their taxability was not, as the court holds, lost by their mere deposit in a bank. It is true that when deposited the moneys became the property of the bank, and for most purposes the relation of debtor and creditor arose between the bank and the depositor; yet as evidently the moneys were to be kept in the State for reinvestment or other use they remained still subject to taxation, according to the decision in *49 La. Ann., 43*. With regard to the notes and mortgages, it may be conceded that there is no express decision of the Supreme Court to the effect that they were taxable under the law of 1890, yet the reasoning of that court in several cases and its declarations, although perhaps only dicta, show that clearly in its judgment they had a local situs within the State, and were by the statute of 1890 subject to taxation.

"With reference to the decisions of this Court it may be said that there has never been any denial of the power of a state to tax securities situated as these are, while there have been frequent recognitions of its power to separate, for purposes of taxation, the situs of personal property from the domicile of the owner.

"This matter of situs may be regarded in another aspect. In the absence of statute, bills and notes are treated as choses in action and are not subject to levy and sale on execution, but by the statutes of many states they are made so subject to seizure and sale, as any tangible personal property. * * *

"It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicil of the owner; are subject to levy and sale on execution, and to seizure and delivery upon replevin; and yet they are but promises to pay—evidences of existing indebtedness. Notes and mortgages are of the same nature; and while they may not have become so generally recognized as tangible personal property, yet they have such a concrete form that we see no reason why a State may not declare that if

found within its limits they shall be subject to taxation."

In *Bristol vs. Washington Co.* (*177 U. S., 133*) it was held that the personal property of a citizen or a resident of one State invested in bonds and mortgages in another State, is subject to taxation in the latter State. Chief Justice FULLER quoted from the decision of the Supreme Court of Minnesota in *Re Jefferson* (*23 Minn., 215*) as follows:

"It is to be taken, therefore, as the intent of the statute, that credits, to whomsoever owning, are taxable here if they can be regarded as personal property *in this state:* that is, situated in this State. To justify the imposition of tax by any State, it must have jurisdiction over the person taxed, or over the property taxed. As Jefferson was not a resident of this State, there was no jurisdiction over him. But if the property on account of which these taxes were unpaid was within this State, the State had jurisdiction to impose them as it might impose a tax upon tangible personal property permanently situated here, and to enforce the taxes against the property. The authorities which we cite in support of the proposition that the credits taxed had a *situs* here, fully sustain this.

"For many purposes the domicil of the owner is deemed the *situs* of his personal property. This, however, is only a fiction, from motives of convenience, and is not of universal application, but yields to the actual *situs* of the property when justice requires that it should. It is not allowed to be controlling in matters of taxation. * * *

"The obligation to pay taxes on property for the support of the government arises from the fact that it is under the protection of the government. Now, here was property within this State, not for a mere temporary purpose, but as permanently as though the owner resided here. It was employed here as a business by the one who exercised over it the same control and management as over his own property, except that he did it in the name of an absent principal. It was exclusively under the protection of the laws of this State. It had to rely on those laws for the force and validity of the contracts on the loans, and the preservation and enforcement of the securities. The laws of New York never operated on it. If credits can ever

have an actual *situs* other than the domicil of the owner, can ever be regarded as property within any other State, and as under obligation to contribute to its support in consideration of being under its protection, it must be so in this case."

Chief Justice FULLER proceeds:

"Nevertheless the business of loaning money through the agency in Minnesota was continued during all these years just as it had been carried on before, and we agree with the Circuit Court that the fact that the notes were sent to Mrs. Bristol in New York, and the fact of the revocation of the power of attorney, did not exempt these investments from taxation under the statutes as expounded in the decision to which we have referred. And we are unable to perceive that any rights secured by the Federal Constitution were infringed by the statutes so far as the *situs* of these loans and mortgages was concerned."

The power of a state to separate for purposes of taxation the *situs* of personal property from the domicile of the owner was likewise recognized.

In *Eidman vs. Martinez, 184 U. S., 578*, which arose under the 29th section of the War Tax Law of June 30, 1898, which differed materially in its provisions from the act now under consideration, the power of a State to tax the intangible property, including credits, of a non-resident was considered, Mr. Justice BROWN saying:

"The ancient maxim of the law, *mobilia sequuntur personam*, was the outcome of conditions which have largely ceased to exist, and of an age when personal property consisted principally of articles appertaining, as the name indicates, to the person of the owner, such as gold and silver, jewels, apparel, and less immediately to horses, cattle and other animals, and to the products of the farm and the shop. As this property was, in primitive times, usually kept under the personal supervision of the owner, and was often carried about by him on his journeys, (as it often still is in Oriental countries,) the principle became incorporated in the law that its locality was determined by the domicil of

of the owner, and that his rights with respect to such property were fixed by the law of that domicil.

"While the enormous increase in the amount and variety of personal property during the past century has necessitated certain limitations of the maxim, particularly in matters of taxation, it is by no means obsolete. It is still the law that personal property is sold, transmitted, bequeathed by will, and is descendible by inheritance, according to the law of the domicil and not by that of its *situs*. *Cross v. United States Trust Co.* 131 N. Y., 330; *Ennis v. Smith*, 14 How., 400, 424; *Dammert v. Osborn*, 141 N. Y., 564. In matters of taxation, however, and of subjecting the personal property of non-residents to the claims of local creditors of the owner, serious encroachments have been made upon the ancient maxim, and a rule has grown up in modern times that legislatures may deal with the personal as well as with the real property of non-residents within their jurisdiction; and that such property, while enjoying the protection and benefits of the local law, may be taxed for the expenses of the local government. These doctrines have found expression in a large number of cases in this court. *Green v. Van Buskirk*, 5 Wall, 307; *S. C.*, 7 Wall., 139; *Hervey v. Rhode Island Locomotive Works*, 93 U. S., 664; *Walworth v. Harris*, 129 U. S., 355; *Security Trust Company v. Dodd*, 173 U. S., 624, and cases there cited.

"Recent cases in this court have affirmed very broadly the right of the legislature to tax the local property of non-residents, and particularly of corporations who are permitted by comity to do business within the State (*The Delaware Railroad Tax*, 18 Wall., 206; *Erie Railway Co. v. Pennsylvania*, 21 Wall., 492; *Western Union Tel. Co. v. Massachusetts*, 125 U. S., 530; *Marye v. Baltimore & Ohio Railroad*, 127 U. S., 117; *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S., 18; *Adams Express Co. v. Ohio*, 166 U. S., 185). The same principle has been applied not only to tangible property, but to credits and effects (*Tappan v Merchants' National Bank*, 19 Wall., 490; *Savings Society vs. Multnomah County*, 169 U. S., 421; *New Orleans v. Stempel*, 175 U. S., 309; *Bristol v. Washington County*, 177 U. S., 133).

"The question in each case is not of the power of the legislature to tax the personal property of non-residents, both tangible and intangible, since that is well established both in England and America

(*Mager v. Grima*, 8 How., 480), but of its intent to do so by the particular act in question.

* * * * * *

"Conceding it to be within the power of Congress to impose an inheritance tax upon property in this country, no matter where owned or transmitted, it has not done so in this case."

In *Moore vs. Ruckgaber, 184 U. S., 593*, which arose under the same act, the *Romaine Case, 127 N. Y., 80*, above referred to, was cited and followed.

(3) DECISIONS IN OTHER JURISDICTIONS.

In *Greves vs. Shaw, 173 Mass, 205; s. c. 53 N. E. Rep., 372*, it was held under the Statutes 1891, Chapter 425, Section 1, imposing a succession tax on all property within the commonwealth, whether tangible or intangible, and whether belonging to residents or not, stock in corporations, organized under the laws of the commonwealth, and of national banks located in the State, is so taxable, although the certificates were without the commonwealth at the testator's death and were transferred by the executor, under the authority of his appointment in the State of New York, before his appointment in the commonwealth. Mr. Justice KNOWLTON said:

"The only ground on which it is strongly contended that the stocks in question are exempt from taxation is that they were transferred by the executor, under the authority of his appointment in the state of New York, before he was appointed in this commonwealth. It is argued by the appellant that, although a foreign executor or administrator cannot be recognized by the courts of the commonwealth in any suit or proceeding to collect assets under his foreign appointment, he has a title, by virtue of it, such that payments and deliveries of property in this commonwealth may properly be made to him * * * This doctrine is subject, however, to the rule that if, in the interests of local creditors, ancillary administration is taken out, the title of the foreign administrator to the property then in the state is subordinate to the title of the ancillary administrator, who specially represents local rights under the authority of local laws.

"It is contended that if, under his foreign appointment, the original executor obtains possession of property in this commonwealth, it should be treated, under this statute, as if it had never been within our jurisdiction, and be free from taxation, inasmuch as it does not come into the hands of the local administrator or executor. But we are of opinion that this contention is not well founded. The provisions of the statute subjecting property described in it to taxation are absolute. The statute assumes that this property will be administered by an executor or administrator appointed in this commonwealth, and makes elaborate provisions in regard to the duties of executors and administrators, and of probate courts, in relation to it. St. 1891, c. 425, Sec. 4, 5, *et seq.* In *Callahan v. Woodbridge*, 171 Mass., 595; 51 N. E., 176, it was pointed out that the 'probate court having jurisdiction of the settlement of the estate of the deceased,' within the meaning of section 14 of this statute, is the probate court in which ancillary administration is taken out, if the testator or intestate is a non-resident. It cannot be supposed that the legislature intended that the question whether the succession to property of non-residents should be taxed or not should depend, in each case, upon the ability or inability of the foreign executor to obtain possession of it in this commonwealth without a sui It must be held that the provisions of the law imposing the tax are to be carried out, and that the right and title of the foreign executor or administrator are subject to the prior right of the commonwealth to have property so administered by officers of its courts as to produce the tax for which it is liable."

The language of Chief Justice DENIO, in *Petersen vs. Chemical Bank, 32 N. Y.*, cited under Point I., subd. IV., 3*a*, is then quoted and applied.

In re Small's Estate, 151 Pa. St., 1; s. c. 25 *Atlantic Rep.*, 23, the interest of a member of a limited partnership organized under the laws of Pennsylvania, and whose business and property were within that State, was held to be personal property situate within the State, and subject to the collateral inheritance tax law, although the decedent was a non-resident of the State. The language of Chief Judge COMSTOCK in *People ex*

rel. Hoyt vs. Commissioners, 23 N. Y., 224, 228, above cited, was applied.

In Kingman County Commissioners vs. Leonard, 57 Kans., 531; s. c. *34 L. R. A., 810,* the question arose as to the right to assess and tax judgments rendered by the courts of Kansas in favor of and owned by citizens of other States. While the statute was construed as not authorizing such taxation, the right of the Legislature to create such a tax was recognized. After referring to the maxim *mobilia personam sequuntur,* Judge ALLEN said:

"To questions of taxation the maxim has very little application. Every sovereignty asserts the right to levy taxes on persons and property within its protection, and the ground on which all taxation is justified is that it is a burden necessarily imposed by the sovereignty in order to enable it to perform its duty in protecting persons and property (1 *Desty Taxn.,* 59; *Cooley, Taxn.,* 19 *et seq.; Story, Confl.,* 1, 543, note A, and cases cited). We think it now quite well settled that choses in action belonging to a non-resident, in the hands of a managing agent within the state, are taxable (*New Albany v. Meekin,* 56 *Am. Dec.,* 522, note page 530, and cases cited therein; 1 *Desty, Taxn.* 64; *Finch v. New York County,* 19 *Neb.* 50, 56 *Am. Rep.* 741). The power to tax residents of the state on credits due from citizens of other states is often upheld (*Kirtland v. Hotchkiss,* 42 Conn., 426, 19 *Am. Rep.* 546). And this even where it results in duplicate taxation (*Dyer v. Osborne,* 11 R. I. 321, 23 *Am. Rep.* 460; note to *People v. Worthington,* 74 *Am. Dec.* 95, and cases cited). The cases upholding the power to tax promissory notes and other written securities held within the state, though owned by a non-resident, sometimes lays stress on the fact that the securities are, in a certain sense, property, and are subject to seizure for debt, and that a title may be made to the intangible debt by delivery of the written evidence of it.

"We perceive no valid objection to the power of the legislature to tax all judgments by domestic courts, and remaining unsatisfied, whether owned by citizens of this state, or other states, or foreign countries, provided the rate of taxation be the same as that imposed on other forms of property belonging to citizens of this state. The question here, however, is whether the

legislature has expressed a purpose to tax judgments in favor of a citizen of another state, rather than as to the power to do so."

In *Allen vs. National State Bank, 92 Md., 509.* s. c. *52 L. R. A., 760,* the right to right to tax mortgages owned by a non-resident was recognized. Mr. Justice FOWLER said:

"It is one of the axioms of the law of taxation that the State has the right to tax all persons and all, property of every kind within its jurisdiction * * * But it is contended that the interest of the mortgagee is in the nature of a chose in action and that according to well settled rule, here and elsewhere, such property must be assessed and taxed to the owner where he has his domicil.

* * * * * *

Conceding for the present that the interest of the mortgagee is in the nature of a chose in action, the general rule that its situs for taxation is the residence of the owner is a mere fiction of law and yields whenever it is necessary for the purpose of justice that the actual situs of the thing should be examined. And whenever the legislative intent is manifested that this legal fiction should not operate."

The decisions in *Savings & Loan Society vs. Multnomah County,* (*supra*), and *Bristol vs. Washington County,* (*supra*), were exhaustively cited and followed.

In Illinois the right to impose a transfer tax under conditions like those existing in the present case, is recognized by express legislative enactment.

Section 9 of Chapter 301 of the Laws of 1895, regulating taxes on inheritances which appears at page 25 of the Record, reads as follows:

"§ 9. Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of a decedent, or in trust for a decedent, which shall be liable to the said tax, such tax shall be paid to the treasury, or treasurer of the proper county on the transfer thereof; otherwise, the corporation forming such transfer shall become liable to pay such taxes; provided that such cor-

poration has knowledge before such transfer that said stocks or loans are liable to such taxes."

From these decisions the rule is deducible that it is within the power of the State to which resort must be had for the purpose of reducing to possession property of a decedent, whether a resident or a non-resident, by those succeeding to his ownership, to impose such restrictions and conditions on the rights of succession as it may see fit to create, whether the property to be reduced to possession is tangible or intangible, real or personal, and even though it may be a mere credit.

This conclusion follows as a corollary to the propositions that the right to succeed to property within the limits of any sovereignty must depend upon the consent of the sovereign; that upon the death of the owner of the property there is no natural or inherent right on the part of his heirs, next of kin or collateral relatives to take his property; and that his right to dispose of it by will is likewise limited by the consent of the State in which he has property. The State, in the case of money deposited in bank, would unquestionably have the right to prohibit the enforcement of the obligation of the bank in favor of the personal representatives of the decedent appointed in another jurisdiction, and would be warranted in appropriating the entire amount of the deposit for its purposes. Since the greater includes the less, it necessarily follows that the sovereign to whom resort must be had for authority to reduce the deposit to possession may impose a tax upon the right to reduce such property to possession, in lieu of absorbing the entire deposit.

As long ago as in 1850 this principle was recognized. In *Mager vs. Grima (8 How. U. S., 490, 493)*, where, under the law of Louisiana, every alien taking as heir, legatee or donee the whole or any part of the succession of the person deceased was required to pay a tax to the State of ten per cent. of the value thereof. The

constitutionality of this legislation was upheld, Chief-Justice TANEY saying:

"Now the law in question is nothing more than an exercise of the power which every state and sovereignty possesses of regulating the manner and term upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. In many of the states of this Union at this day real property devised to an alien is liable to escheat. And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy. This has been done by Louisiana. The right to take is given to the alien, subject to a deduction of ten per cent. for the use of the state.

"In some of the states, laws have been passed at different times imposing a tax similar to the one now in question, upon its own citizens as well as foreigners; and the constitutionality of these laws has never been questioned. And if a state may impose it upon its own citizens, it will hardly be contended that aliens are entitled to exemption; and that their property in our own country is not liable to the same burdens that may lawfully be imposed upon that of our own citizens."

In *United States vs. Perkins, 163 U. S., 625*, Mr. Justice BROWN said:

"Though the general consent of the most enlightened nations has from the earliest historical period recognized a natural right in children to inherit the property of their parents, we know of no legal principle to prevent the legislature from taking away or limiting the right of testamentary disposition, or imposing such conditions upon its exercise as it may deem conducive to the public good. In this view the so-called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; the decla-

ration that in the exercise of that power he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to conditions that the state has a right to impose."

See, also, State vs. Dalrymple, 70 Md., 294; Plummer vs. Coler, 178 U. S., 115, 130, 137; Magoun vs. Ill. Trust & Sav. Bank, 170 U. S., 288.

The case principally relied on by the plaintiff in error is *State Tax on Foreign Held Bonds, 15 Wall., 300.* There, after bonds had been issued by a railroad company and transferred to and held by a non-resident of the State of Pennsylvania, in which the company was incorporated, a law was passed which imposed a tax of five per cent. on the amount of interest due on bonds of the company, payable out of the State to non-residents. It was held that this law was unconstitutional, since it interfered between the company and its bondholders, and, under the guise of levying a tax, impaired the obligation of the contract between the parties.

It will be noted that in that case the bonds sought to be taxed were in the hands of the holders outside of the boundaries of Pennsylvania; that such holders were non-residents of the State, and that the law imposing the tax was passed after the bonds had been issued.

It was not intended by this decision to restrict the power of the State on the subject of taxation, or to lay down a rule forbidding the Legislature from creating a situs for property for purposes of taxation. This clearly appears from the opinion of Mr. Justice FIELD, who says:

"Unless restrained by provisions of the Federal Constitution, the power of the state as to the mode, form and extent of taxation is unlimited where the subjects to which it applies are within her jurisdiction. Corporations may be taxed, like natural persons, upon their property and business, but debts owing by corporations, like debts owing by individuals, are not

property of the debtors in any sense. They are obligations of the debtors and only possess value in the hands of the creditors. With them they are property, and in their hands they may be taxed. To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things in debts of corporations belongs to the creditors to whom they are payable, and follows their domicil wherever that may be. Their debts can be in no locality separate from the parties to whom they are due. * * * The bonds issued by the railroad company in this case are undoubtedly property, but property in the hands of the holders, not property of the obligors. So far as they are held by non-residents of the state they are property beyond the jurisdiction of the state. The law which requires the treasurer of the company to retain five per cent. of the interest due to the non-resident bondholders is not, therefore, a legitimate exercise of the taxing power. It is a law which interferes between the company and the bondholder, and under the pretence of levying a tax commands the company to withhold a portion of the stipulated interest and pay it over to the State. It is a law which thus impairs the obligation of the contract between the parties. The obligation of a contract depends upon its terms and the means which the law in existence at the time affords for its enforcement. A law which alters the terms of the contract by imposing new conditions, or dispensing with those expressed, is a law which impairs its obligation, for, as stated on another occasion, such a law relieves the parties from the moral duty of performing the original stipulation of the contract and prevents their legal enforcement."

It is further to be noted that in the case cited the question was one of direct taxation on the property of a non-resident, while in the present case there is no attempt to tax property but merely the right of succession, which is governed by different principles. It is likewise to be noted that in this case Mr. Blackstone deposited his money after the passage of the Transfer Tax Act, and after it had been construed by the Court of Appeals in the Houdayer case to include within its terms deposits of such a character as those which he made.

The case now under consideration has been overruled in part in *Savings Society vs. Multnomah County, 169 U. S.. 428, 429,* and was qualified in *New Orleans vs. Stempel, 175 U. S., 320,* where, after quoting from the opinion of Mr. Justice FIELD, in *15 Wall.*, the sentence:

"But other personal property, consisting of bonds, mortgages and debts generally, has no situs independent of the domicil of the owner, and certainly can have none where the instruments, as in the present case, constituting the evidences of debt are not separated from the possession of the owners,"

Mr. Justice BREWER says:

"This last sentence, properly construed, is not to be taken as a denial of the power of the legislature to establish an individual situs for bonds and mortgages when those properties are not in the possession of the owner, but simply that the fiction of law, so often referred to, declares their situs to be that of the domicil of the owner—a declaration which the legislature has no power to disturb when *in fact* they are in his possession."

Having now considered the basic proposition on which the plaintiff in error founds her contention that the tax under review is unconstitutional, and having shown that it is without foundation, it will be unnecessary to indulge in elaborate argument with respect to the several specific grounds on which the claim of unconstitutionality is based.

IV.

The statute on which the tax is predicated does not impair the obligation of the contract.

Mr. Blackstone brought his money into New York State and accepted the protection of its laws in March, 1899, and left his money there until May 26th, 1900. The transfer tax now sought to be collected was imposed by a statute which originated in 1885, and which in 1896 had been construed by the Court of Appeals to apply to deposits such as were made by him, hence his contract was made subsequent to the statute imposing the transfer tax, and must be deemed to have been made with reference to it, especially in view of the age and physical condition of Mr. Blackstone. There can have been no impairment of any contract.

Is is unnecessary to do more than to refer to the discussion under the preceding point with regard to this feature of the case and to cite *Pinney vs. Nelson, 183 U. S., 144, 147*, where Mr. Justice BREWER, said:

"With reference to the contention that the law of California impairs the obligation of the contract with the stockholders, it is enough to say that that law, both constitutional and statutory, was enacted long before the incorporation of the Los Angeles Iron & Steel Co., and that therefore Section 10 of Article I. of the Federal Constitution has no application. 'It is equally clear that the law of the state to which the Constitution refers in that clause must be one enacted after the making of the contract, the obligation of which is claimed to be impaired.'

"*Lehigh Water Co. v. Easton, 121 U. S., 388, 391.*

"See, also,

"*Central Land Co. v. Leadley, 159 U. S., 103, 111.*

"*McCullough v. Virginia, 172 U. S., 102, 116.*"

V.

The tax is not rendered unconstitutional because there is a possibility that the decedent's estate may be subjected to double taxation.

There is no provision of the Federal Constitution governing State taxation, which forbids unequal or double taxation.

In *Davidson vs. New Orleans* (*96 U. S., 97, 106*), this was expressly declared, Mr. Justice MILLER saying :

" It is said that the plaintiff's property had previously been assessed for the same purpose and the assessment paid. If this be meant to deny the right of the state to tax or assess property twice for the same purpose, we know of no provision in the Federal Constitution which forbids this, or which forbids unequal taxation by the states. If the act under which the former assessment was made is relied on as a contract against further assessments for the same purpose, we concur with the Supreme Court of Louisiana in being unable to discover such a contract."

Dyer vs. Osborne, 11 R. I., 321 ; S. C., *23 Am. Rep., 460*, is to the same effect.

This doctrine was applied to an inheritance tax in *Frothingham vs. Shaw, 175 Mass., 59, 61.*

In *People vs. The Home Insurance Co. (92 N. Y., 347)*, Chief Judge RUGER said :

" In the consideration of the effect and meaning of laws imposing taxes it would undoubtedly be the duty of the court to so construe them, if possible, as to avoid unequal and double taxation, but in determining the question of legislative power we are precluded from entertaining such considerations and must be governed by the constitutional authority conferred by the legislative body. In performing the duty of levying taxes for the support of government, state legislatures may, in the exercise of their undoubted power, impose double taxes or lay burdens beyond the finan-

cial capacity of the classes taxed, and however impolitic or unwise such a course would be, the courts have no right to interfere with the exercise of the legislative discretion. Such questions properly belong to the legislative branch of the government, whose exclusive duty it is to apportion and impose the taxes required for the use of the government."

This case was affirmed by this Court in *119 U. S., 129,*

In *Coe vs. Errol, 116 U. S., 524,* Mr. Justice BRADLEY said:

"We take it to be a point settled beyond all contradiction, or question, that a State has jurisdiction of all persons and things within its territory which do not belong to some other jurisdiction, such as the representatives of foreign governments, with their houses and effects, and property belonging to or in the use of the government of the United States. If the owner of personal property within a State resides in another State which taxes him for that property as part of his general estate attached to his person, this action of the latter State does not in the least affect the right of the State in which the property is situated to tax it also."

The War Tax on inheritances was sustained in *Knowlton vs. Moore (178 U. S., 53),* although the State had likewise imposed a tax on the same inheritance, although it was recognized that the transmission of property by will or intestacy is within the exclusive province of State and not Federal regulation.

There is no question of interpretation before this Court. That was passed upon by the Court of Appeals. The constitutionality of the act is not affected by the circumstance that the State of Illinois has likewise imposed an inheritance tax based on the moneys now under consideration.

Moreover, the Inheritance Tax Law of Illinois gives to the plaintiff in error a remedy which will enable her to receive from that State the tax erroneously paid by her on the assumption that the succession to the

money deposited in the New York banks was taxable in Illinois.

After providing for the payment by a foreign executor or administrator of a transfer tax on stocks or loans in the State of Illinois standing in the name of the decedent, or in trust for him, (which of necessity recognizes a correlative obligation on the part of an Illinois executor or administrator to pay a tax on a transfer of stocks or loans in the State of New York standing in the name of a decedent or in trust for him to the public authorities of that state), *Section 10* provides as follows:

"When any amount of said tax shall have been paid erroneously to the State Treasurer it shall be lawful for him on satisfactory proof rendered to him by said County Treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid; provided that all applications for the repayment of said tax shall be made within two years from the date of said payments."

The plaintiff in error was thus in a position at any time prior to November 26th, 1902, to apply to the Illinois authorities for repayment of the tax paid on the money deposited in New York. If she has not made such application the fault is her own.

VI.

The decision sought to be reviewed does not deny full faith and credit to any public acts, records or judicial proceedings in the State of Illinois.

It is claimed that because proceedings were instituted in the County Court of Cook County, Illinois,

imposing a succession tax based on the money deposited by the decedent in New York under the Illinois inheritance law, that such proceedings debarred the State of New York from enforcing its own law relative to the taxation of transfers.

In effect this is a claim that double taxation is unconstitutional. That it is not is fully considered under Point V.

If the contention of the plaintiff in error means anything it is that because Illinois has sought to impose a tax upon the succession to certain property no other state can impose such tax, even though it has jurisdiction over a decedent's property. The contention is in direct conflict with the adjudged cases.

In *Bonaparte vs. Tax Court (104 U. S., 592)*, a resident of Baltimore, Md., returned, in accordance with the law of that state, to the proper board of assessors, that she owned certain stocks, issued under the laws of the States of New York and Pennsylvania, and claimed their exemption from taxation because they were of a public character, except a portion of the stock of the City of Philadelphia which had always been subjected by Pennsylvania to a tax which she had paid to that state.

The claim for exemption was disallowed, and it was claimed that thereby the full faith and credit clause of the Constitution was violated. Chief Justice WAITE, however, said :

" We are unable to give such an effect to this provision. No state can legislate except with reference to its own jurisdiction. One state cannot exempt property from taxation in another. Each state is independent of all the others in this particular."

In *C. N. Nelson Lumber Co. vs. Town of Loraine (22 Fed. Rep., 60)*, it was held that where a tax is lawfully levied on property in one State the constitutionality of such tax is not affected by the fact that such property is again subjected to taxation in another State to which the owner has removed. Neither does

the fact that the lands on which logs are grown are assessed for taxation in May and the logs cut therefrom are assessed for taxation in the following April render the tax void on the ground that it is double taxation.

If it is claimed that the proceedings in the County Court of Cook County are to be given full faith and credit as an adjudication, that claim cannot be supported since neither the State of New York nor any of its officers, nor anybody representing it, was a party to those proceedings, and, for the reasons considered in *Johnson vs. Powers* (*139 U. S., 156*), they have no binding force against the defendants in error.

As was said in *Stacy vs. Thrasher* (*6 How. U. S., 44*), and the language was adopted in the case cited:

"The laws and Courts of a State can only affect persons and things within their jurisdiction. Consequently, both as to the administrator and the property confided to him, a judgment in another State is *res inter alios acta.* It cannot be even *prima facie* evidence of a debt; for if it have any effect at all it must be as a judgment, and operate by way of estoppel."

If a contrary rule were adopted the collection of a succession tax on the property of a non-resident by any State could be easily prevented and the system of taxation now in general vogue practically nullified.

VII.

The statute does not deprive the plaintiff in error of any of the privileges and immunities of citizens of the State of New York.

The act under consideration seeks to tax the right of succession to all property within the State, whether

it belongs to a resident or a non-resident. It certainly creates no exception in favor of a resident of the State. It gives him no privilege or immunity. Non-residents are only taxed on the right of succession to property within the State, while residents of the State are subjected to a tax upon all of their property wherever it may be situated.

In *Mager vs. Grima (8 How., U. S., 490)*, a similar tax upon aliens was declared to be constitutional, and in *Wallace vs. Meyers (38 Fed. Rep., 184; appeal dismissed, 154 U. S., 523)*, a similar conclusion was reached with respect to the New York inheritance tax of 1885.

Speaking of an objection made to a tax on "property situated within the State of Louisiana, except such as is expressly exempted from taxation by the constitution, Mr. Justice BRADLEY said in *Brown vs. Houston (114 U. S., 622, 635)*:

"We are unable to see how or in what respect any equality of privileges as citizens has been denied to the plaintiffs by the imposition of the tax. Their property was only taxed like that of all other persons, whether citizens of Louisiana or of any other state or country. Not the slightest discrimination was made."

VIII.

The act does not violate the Fourteenth Amendment to the Constitution of the United States.

(A) It does not abridge the privileges and immunities of the plaintiff in error.

As has been frequently stated, the plaintiff in error had no right to succeed to the decedent's ownership of the property which is made the basis of taxation here, except by force of the sovereign will and through its

grace. The requirement of the payment of a succession tax, instead of the absolute appropriation by the State of all of the property in accordance with its inherent power, was an act or leniency and not a deprivation of any privilege of immunity secured to her.

(B) It does not deny to her the equal protection of the law.

In *Magoun vs. Illinois Trust & Savings Bank (170 U. S., 283)*, it was held that although the inheritance tax of Illinois made a classification for taxation by imposing a graded or progressive tax, the Legislature had the power to create such classification without contravening the Constitution. Mr. Justice McKenna said:

"The clause of the Fourteenth Amendment especially invoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances' (Kentucky Railroad Tax Cases, 115 U. S., 321, 337). It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory in which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. * * * With these for illustration it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the state a wide latitude as far as interference by this court is concerned. Nor with the impolicy of a law has it concern."

The cases of *Bell's Gap Railroad vs. Pennsylvania (134 U. S., 232); Giozza vs. Tiernan (148 U. S., 657); Pacific Express Co. vs. Seibert (142 U. S., 339); Merchants' Bank vs. Pennsylvania (167 U. S., 461), and Davidson vs. New Orleans (96 U. S., 97, 105)*, are then

cited, and the language of Mr. Justice MILLER in the latter case, that "the Federal Constitution imposes no "restraints on the state in regard to unequal taxation," was approved.

In *Orr vs. Gilman (183 U. S., 278)* the constitutionality of the Transfer Tax Law of New York was attacked on this ground, and Mr. Justice SHIRAS, after reviewing the cases, and particularly *Carpenter vs. Pennsylvania (17 How., 456)*, said:

"In the light of the principles thus established we are unable to see in this legislation of the State of New York, as construed by its highest court, any infringement of the salutary provisions of the Fourteenth Amendment. There are involved no arbitrary or unequal regulations, prescribing different rates of taxation on property or persons in the same condition. The provisions of the law extend alike to all estates that descend or devolve upon the death of those who once owned them. The moneys raised by the taxation are applied to the lawful uses of the state, in which the legatees have the same interests with the other citizens. Nor is it claimed that the amount or rate of the taxation is excessive to the extent of confiscation. * * * These views of the Court of Appeals must be accepted by us as accurate statements of the law of the state; and though it is claimed in the brief of counsel for the plaintiffs in error, that such a construction of the transfer tax law brings it into conflict with the Fourteenth Amendment of the Constitution of the United States, we are unable to approve such a contention. The subject dealt with is one of state law, expounded by state courts. The laws and the construction put upon them apply equally to all persons in a like situation and cannot be regarded as conflicting with the provisions of the Federal Constitution."

(C) It does not deprive the plaintiff in error of her property without due process of law.

1. The statute provides for the fullest notice to all persons affected by the tax, and gives the amplest opportunity to be heard before its imposition, and this right was availed of by the plaintiff in error. This constitutes due process.

As was said in *Davidson vs. New Orleans* (*96 U. S., 97, 104*):

"Whenever by the laws of a state or by state authority a tax, assessment, servitude or other burden is imposed upon the property for the public use, whether it be for the whole state or some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

It is enough if the law provides for a board of review authorized to hear complaints respecting the justice of an assessment, and prescribes the time during which and the place where such complaints may be made.

Hagar vs. Reclamation District, 111 U. S., 701, 710.

This doctrine has been so frequently applied that it will suffice to cite a few of the well-known cases on the subject.

Spencer vs. Merchant, 125 U. S., 345.
Palmer vs. McMahon, 133 U. S., 660, 669.
Lent vs. Tillson, 140 U. S., 316, 327.
Pittsburg, &c., R. R. Co. vs. Backus, 154 U. S., 421.
Fallbrook Irrigation District vs. Bradley, 164 U. S., 168.
Merchants' Bank vs. Pennsylvania, 167 U. S., 467.

2. The question as to whether or not the property on which the tax now under consideration is based was within the State of New York for jurisdictional purposes, has been sufficiently treated under Point III.

3. The criticism on the regularity of the procedure of the Appellate Division in reversing the Surrogate's decision presents no Federal question, nor has it any merit.

Under the provisions of the Tax Law which were in force at the time of the institution of these proceedings the Comptroller of the City of New York was empowered to initiate them. By Chapter 173 of the Laws of 1901 the State Comptroller was thenceforth made the representative of the State for the institution of proceedings for the collection of the transfer tax. The appeal from the decision of the Surrogate was taken by the Comptroller of the City of New York after the passage of this act and the plaintiff in error claims that such appeal was irregular.

A motion was made to the Appellate Division to dismiss the appeal, which was denied on the ground that the proceedings having been properly instituted by the Comptroller of the City of New York, they must necessarily be conducted in his name until the substitution of the Comptroller of the State of New York (Rec., pp. 78–86). Leave to appeal to the Court of Appeals from the order denying the motion to dismiss was denied, and that Court in all respects affirmed the decision of the Appellate Division.

(a) This feature of the case involves a mere question of State practice and procedure and the interpretation by the New York Courts of the State statutes regulating such procedure, and is not one of Federal cognizance.

Chief-Justice WAITE in *Walker vs. Sauvinet* (92 U. S., 90, 93) said :

" Here the state court has decided that the proceeding below was in accordance with the law of the state ; and we do not believe that to be contrary to the constitution or any law or treaty of the United States."

Mr. Justice GRAY said in *Central Land Co. vs. Laidley* (*159 U. S., 112*) :

" When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of the court does not deprive the unsuccessful party of his property without due process of law within the Fourteenth Amendment of the Constitution of the United States."

As further indicating that no Federal question is involved in this regard attention is called to

O'Neil vs. Vermont, 144 U. S., 323.
Duncan vs. Missouri, 152 U. S., 377, 383.
Moore vs. Missouri, 159 U. S., 673, 679.

(b) Even if the circumstances adverted to had created a Federal question it was not raised in any of the State courts, and it does not appear on the record that any right, privilege or immunity involved in this question of practice was specially set up or claimed at the proper time or in the proper way.

Leeper vs. Texas, 139 U. S., 461.
O'Neil vs. Vermont, 144 U. S., 323.

(c) The State of New York was the beneficiary of the tax and the real party interested in the collection thereof, and acted through its duly authorized officers in seeking to review the adverse decision of the Surrogate's Court in strict conformity with the statute.

Tax Law, §§ 222, 225, 228, 229, 230, 235, 237, 242.

(d) The right to appeal from the final order of the Surrogate was not derived from the Tax Law, but from the provisions of the *New York Code of Civil Procedure, §§ 2568–2573.*

Morgan vs. Warner, 45 App. Div., 424.
People ex rel. Burnham vs. Jones, 110 N. Y., 509.

(e) The amendment of 1901 did not deprive the Comptroller of the City of New York of his right to appeal, since the act applied only to proceedings instituted after it took effect and did not have any retrospective operation.

Mahoney vs. Bernhard, 45 App. Div., 449; affd. 169 N. Y., 589.
N. Y. & Oswego R. R. Co. vs. Van Horn, 57 N. Y., 473, 478.

(f) By virtue of the provisions of Section 31 of the Statutory Construction Law (N. Y. Laws 1892, Chap.

677), the right to prosecute the appeal to final effect in the same manner as it might have been done if the Act of 1901 had not been passed was expressly saved.

Matter of Prime, 136 N. Y., 347, 355.
Cameron vs. N. Y. & Mt. Vernon Water Co., 133 N. Y., 336.

(g) The plaintiff in error was in no manner prevented from prosecuting her appeal. Her day in Court was never taken from her. Her present complaint, that the defendant in error should have been prevented from prosecuting an appeal from the decision of the Court of first instance within the time prescribed by law for the taking of an appeal, does not involve a claim of violation of any right secured to her by the Federal organic law.

4. The failure of the assessors to deduct from the value of the property upon which the tax was based the amount of the Illinois inheritance and the Federal legacy tax in like manner presents merely a question of procedure and not one of constitutional right, and involves no error.

Under the terms of the Transfer Tax Law the tax levied by this State accrued at the instant of the decedent's death, and was measured by his interest in property belonging to him within this State, and not by the interest of the beneficiaries under the will. It necessarily follows that the property of the decedent is to be appraised at its fair market value at the time of death, regardless of the taxes which the beneficiaries under the will are required to pay, before enjoying the decedent's estate, by the statutes of other governments that impose a tax thereon.

Matter of Gihon, 169 N. Y., 443.
Matter of Swift, 137 N. Y., 77.
Matter of Kennedy, 20 Misc., 501.
Matter of Becker, 26 Misc., 633.
Matter of Irish, 28 Misc., 647.
Matter of Curtis, 31 Misc., 83.

In the present case no evidence was offered by the plaintiff in error as to the amount of the Federal leg-

acy tax. The amount of the Illinois tax does appear, but, as has been shown, an ample remedy exists under the statutes of Illinois to recover back any tax erroneously paid to that State. But, even if it could not be recovered, the proposition now under consideration, if it presents any constitutional aspect, is that of double taxation, which, as has been seen, involves no infraction of the Fourteenth Amendment.

It is, however, urged that this part of the discussion merely relates to the amount of tax payable under the laws of New York. It refers to the action of the appraisers in fixing the basis for the assessment to the same degree as would have been the case if the property assessed had been chattels. Surely this Court could not be called upon to review the findings of the appraisers as to value of property assessed, or as to the amount of an assessment. That would involve a question of fact, or of interpretation, as to which the appraisers and the State Courts might possibly have been in error, inasmuch as such error, however, would not involve the validity of the law under which the tax is assessed, the action of the State Courts in administering the act must be deemed conclusive under the rule laid down in *Morley vs. Lake Shore R. R. Co. (146 U. S. 167)*.

Moreover, the record fails to show that any Federal question was raised with regard to the matter now under discussion.

IX.

The plaintiff in error cannot escape taxation on the pretence that the money deposited by the decedent was only transitorily within the State of New York at the time of his death.

The stock of the Chicago and Alton Railroad Company belonging to the decedent was sent to New York

on March 29th, 1899. The proceeds were entered as cash in the account of the decedent upon the trust company's ledger entitled "Deposits in Trust. Draft Account" on March 31st, 1899. The money remained in the custody of the trust company continuously from that time until May 26th, 1900, when Mr. Blackstone died. He was in receipt of interest thereon during the interim.

While it is said that it was the ultimate intention of the testator to invest these proceeds, and, although, it is alleged in the answer that they were allowed to remain in the City of New York "to avoid the risk and expense of their transfer to Chicago, and their probable retransfer to New York when he had determined what permanent investment of them he should make," the fact remains that for fourteen months they remained within the State of New York, and were practically invested during that time accumulating interest in accordance with the arrangement made between the trust company and Mr. Blackstone.

Assuming for the sake of the argument that under the law of taxation there is a legal distinction between property in transit and that which is not, it certainly is difficult to understand how a fund which is within the State for so protracted a period as fourteen months, under the conditions indicated, can be said to be temporarily within the State.

Counsel for the plaintiff in error frankly says in his brief (p. 56), referring to the claim that Mr. Blackstone was prevented by his increasing ill health from permanently investing this money:

"Now, whether the incapacity lasted for three days "or three years seems immaterial. The temporary "character of the situation of the indebtedness in the "State of New York and the fixed purpose to remove "it at the earliest practicable time, a purpose which "was only frustrated by death, constitute the controll-"ing facts."

If the fact that a fund remains within the State of New York for three years under such circumstances is

immaterial, why would not a period of thirty years be equally immaterial? Where is the line to be drawn? Who is to determine whether property is temporarily within the boundaries of a State or not? Is the unexpressed intention of the owner of the property to govern? Or is a self-serving declaration made by him to control?

The view most favorable to the party taxed that could be taken of this subject is, to leave it as a question of fact to be determined by the taxing officer or by the State Courts. It certainly does not rise to the dignity of a Federal question.

The Court of Appeals has declared, not only in this case but also in the *Romaine Case (127 N. Y., 82, 89)*, that the money of the decedent was not temporarily within the State; and it is believed that that view is not reviewable here.

The cases relied on by the plaintiff in error have no application.

In *St. Louis vs. Ferry Company (11 Wall., 423)* the ferryboats sought to be taxed in St. Louis belonged to an Illinois corporation, and their relation to the City of St. Louis was simply that of contact, as one of the termini of their voyage, and, therefore, were not taxable under a law affecting boats *within* the state.

Particular attention is called to the language of Mr. Justice SWAYNE, on page 430, which sustains in various respects the views expressed under Point III.

Coe vs. Erroll (116 U. S., 517), merely defines what is meant by goods in transit within the meaning of interstate or foreign transportation, and it was held that logs cut in New Hampshire awaiting transportation by river to Maine, were a part of the general mass of property in New Hampshire, and as such liable to taxation there.

But even if this money were deemed temporarily within the State, that fact could not avail the plaintiff in error, since the Transfer Tax Law of New York does

not exempt a non-resident's property "temporarily within the state" from taxation.

It is evident from a reading of the present act, and a study of its evolution from the Act of 1885, that it was the purpose of the Legislature to meet every possible contingency so as to make its operation coextensive with the sovereignty of the State. There is nowhere within the act a suggestion of a distinction between property temporarily and that permanently within the State. Except as restricted by constitutional enactment the power of the Legislature to impose a tax is only limited by the ability of the State to collect it.

Matter of McPherson, 104 N. Y., 306.
Matter of Bronson, 150 N. Y., 15.
Matter of Whiting, 150 N. Y., 27.

No such exemption as that claimed has been read into the statute by judicial construction. Whatever dicta there may be found in *Matter of Enston (113 N. Y., 174)* were overcome by the amendment of the collateral inheritance tax of 1885 by Chapter 713 of the Laws of 1887.

In *Matter of Romaine (127 N. Y., 80)*, Judge VANN said :

"We should hesitate before applying the statute to any property casually brought into the state for a temporary purpose, as by a visitor or traveler, but the record before us does not present such a case. It might well be held that such property, although literally 'within this state,' was not here in the sense meant by the statute, on account of the transitory and accidental character of its presence and the immediate custody of the owner. * * * Where, however, the money of a non-resident is invested in this state * * * or where the property of a non-resident is habitually kept, even for safety, in this state, we think that the statute applies both in the letter and spirit. Such property is within this state in every reasonable sense, receives the protection of its laws and has every advantage from government, for the support of which taxes are laid, that it would have if it belonged to a resident. * * * We have nothing to do with

the policy of the statute, as our duty is discharged when we declare its meaning and apply it to the case in hand."

To the same effect is *Matter of Burr* (16 Misc., 89).

It is an elementary principle of taxation that the subject should be certain. This is as important for the person who ultimately pays the tax as it is for the State which collects it. If the identification of the property to be taxed requires the solution of complicated questions of fact, serious difficulties ensue equally burdensome to the citizen and unfortunate to the State.

If the taxability of personalty of non-residents found within the State should depend on the ascertainment of the purpose of the decedent in bringing his property into this State, of his intention with regard to leaving it here, and as to his ultimate desires, the administration of the law would become fraught with serious problems, its application would become uncertain, would lack uniformity and might depend largely upon the judgment, discretion, caprice and personal views of taxing officers and courts of original jurisdiction.

X.

It is respectfully submitted that the order appealed from should be affirmed,

Dated January 2, 1903.

LOUIS MARSHALL,
JULIUS OFFENBACH,
Counsel for Defendants in Error.

Supreme Court of the United States.

No. 423.—October Term, 1902.

Isabella F. Blackstone, Individually and as Executrix of the last Will and Testament of Timothy B. Blackstone, deceased, Plaintiff in Error,
vs.
Nathan L. Miller, Comptroller of the State of New York, and Edward M. Grout, Comptroller of the City of New York.

In error to the Surrogates' Court of New York County, State of New York.

[January 26, 1903.]

Mr. Justice Holmes delivered the opinion of the Court.

This a writ of error to the Surrogates Court of the county of New York. It is brought to review a decree of the court, sustained by the Appellate Division of the Supreme Court, 69 App. Div. 127, and by the Court of Appeals, N. Y. , levying a tax on the transfer by will of certain property of Timothy B. Blackstone, the testator, who died domiciled in Illinois. The property consisted of a debt of $10,692.24, due to the deceased by a firm, and of the net sum of $4,843,456.72, held on a deposit account by the United States Trust Company of New York. The objection was taken seasonably upon the record that the transfer of this property could not be taxed in New York consistently with the Constitution of the United States.

The deposit in question represented the proceeds of railroad stock sold to a syndicate and handed to the Trust Company, which, by arrangement with the testator, held the proceeds subject to his order, paying interest in the meantime. Five days' notice of withdrawal was required, and if a draft was made upon the company, it gave its check upon one of its banks of deposit. The fund had been held in this way from March 31, 1899, until the testator's death on May 26, 1900. It is probable, of course, that he did not intend to leave the fund there forever and that he was looking out for investments, but he had not found them when he died. The tax is levied under a statute imposing a tax "upon the transfer of any property, real or personal. . . . 2. When the transfer is by will or intestate law, of property within the State, and the decedent was a non-resident of the State at the time of his death." L. 1896, c. 908, § 220, amended, L. 1897, c. 284, 3 Rev. Stat. &c., 3d ed., 1901, p. 3592. The whole succession has been taxed in Illinois, the New York deposit being included in the appraisal of the estate. It is objected to the New York tax that

the property was not within the State, and that the courts of New York had no jurisdiction; that if the property was within the State it was only transitorily there, *Hays* v. *Pacific Mail Steamship Co.*, 17 How. 596, 599, 600, that the tax impairs the obligation of contracts, that it denies full faith and credit to the judgment taxing the inheritance in Illinois, that it deprives the executrix and legatees of privileges and immunities of citizens of the State of New York, and that it is contrary to the Fourteenth Amendment.

In view of the State decisions it must be assumed that the New York statute is intended to reach the transfer of this property if it can be reached. *New Orleans* v. *Stempel*, 175 U. S. 309, 316; *Morley* v. *Lake Shore & Michigan Southern Ry. Co.*, 146 U. S. 162, 166. We also must take it to have been found that the property was not *in transitu* in such a sense as to withdraw it from the power of the State, if otherwise the right to tax the transfer belonged to the State. The property was delayed within the jurisdiction of New York an indefinite time, which had lasted for more than a year, so that this finding at least was justified. *Kelley* v. *Rhoads*, present term. Both parties agree with the plain words of the law that the tax is a tax upon the transfer, not upon the deposit, and we need spend no time upon that. Therefore the naked question is whether the State has a right to tax the transfer of such deposit by will.

The answer is somewhat obscured by the superficial fact that New York, like most other States, recognizes the law of the domicil as the law determining the right of universal succession. The domicil, naturally, must control a succession of that kind. Universal succession is the artificial continuance of the person of a deceased by an executor, heir, or the like, so far as succession to rights and obligations is concerned. It is a fiction, the historical origin of which is familiar to scholars, and it is this fiction that gives whatever meaning it has to the saying *mobilia sequuntur personam*. But being a fiction it is not allowed to obscure the facts, when the facts become important. To a considerable, although more or less varying, extent the succession determined by the law of the domicil is recognized in other jurisdictions. But it hardly needs illustration to show that the recognition is limited by the policy of the local law. Ancillary administrators pay the local debts before turning over the residue to be distributed, or distributing it themselves, according to the rules of the domicil. The title of the principal administrator, or of a foreign assignee in bankruptcy, another type of universal succession, is admitted in but a limited way or not at all. See *Crapo* v. *Kelly*, 16 Wall. 610; *Chipman* v. *Manufacturers' National Bank*, 156 Mass. 147, 148, 149.

To come closer to the point, no one doubts that succession to a tangible chattel may be taxed wherever the property is found, and none the less that the law of the *situs* accepts its rules of succession from the law of the

domicil, or that by the law of the domicil the chattel is part of a *universitas* and is taken into account again in the succession tax there. *Eidman* v. *Martinez*, 184 U. S. 578, 586, 587, 592. See *Mager* v. *Grima*, 8 How. 490, 493; *Coe* v. *Errol*, 116 U. S. 517, 524; *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S. 18, 22; *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; *New Orleans* v. *Stempel*, 175 U. S. 309; *Bristol* v. *Washington County*, 177 U. S. 133; and for State decisions *Matter of Estate of Romaine*, 127 N. Y. 80; *Callahan* v. *Woodbridge*, 171 Mass. 595; *Greves* v. *Shaw*, 173 Mass. 205; *Allen* v. *National State Bank*, 92 Md. 509.

No doubt this power on the part of two States to tax on different and more or less inconsistent principles, leads to some hardship. It may be regretted, also, that one and the same State should be seen taxing on the one hand according to the fact of power, and on the other, at the same time, according to the fiction that, in successions after death, *mobilia sequuntur personam* and domicil governs the whole. But these inconsistencies infringe no rule of constitutional law. *Coe* v. *Errol*, 116 U. S. 517, 524; *Knowlton* v. *Moore*, 178 U. S. 41.

The question then is narrowed to whether a distinction is to be taken between tangible chattels and the deposit in this case. There is no doubt that courts in New York and elsewhere have been loath to recognize a distinction for taxing purposes between what commonly is called money in the bank and actual coin in the pocket. The practical similarity more or less has obliterated the legal difference. *Matter of Houdayer*, 150 N. Y. 37; *New Orleans* v. *Stempel*, 175 U. S. 309, 316; *City National Bank* v. *Charles Baker Co.*, 180 Mass. 40, 42. In view of these cases and the decision in the present case, which followed them, a not very successful attempt was made to show that by reason of the facts which we have mentioned, and others, the deposit here was unlike an ordinary deposit in a bank. We shall not stop to discuss this aspect of the case, because we prefer to decide it upon a broader view.

If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. *United States* v. *Perkins*, 163 U. S. 625, 628, 629; *McCullough* v. *Maryland*, 4 Wheat. 316, 429. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. The principle has been recognized by this court with regard to garnishments of a domestic debtor of an absent defendant. *Chicago, Rock Island & Pacific Ry. Co.* v. *Sturm*, 174 U. S. 710. See *Wyman* v. *Halstead*, 109 U. S. 654. What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the

law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that *actio personalis moritur cum persona*, and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone.

Power over the person of the debtor confers jurisdiction, we repeat. And this being so we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and the policy of a State conflict with a fiction due to historical tradition, the fiction must give way.

There is no conflict between our views and the point decided in the case reported under the name of *State Tax on Foreign-held Bonds*, 15 Wall. 300. The taxation in that case was on the interest on bonds held out of State. Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. *Bacon* v. *Hooker*, 177 Mass. 335, 337. Therefore, considering only the place of the property, it was held that bonds held out of the State could not be reached. The decision has been cut down to its precise point by later cases. *Savings & Loan Society* v. *Multnomah County*, 169 U. S. 421, 428; *New Orleans* v. *Stempel*, 175 U. S. 309, 319, 320.

In the case at bar the law imposing the tax was in force before the deposit was made, and did not impair the obligation of the contract, if a tax otherwise lawful ever can be said to have that effect. *Pinney* v. *Nelson*, 183 U. S. 144, 147. The fact that two States, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. *Coe* v. *Errol*, 116 U. S. 517, 524; *Knowlton* v. *Moore*, 118 U. S. 53. The universal succession is taxed in one State, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money. See *Adams* v. *Batchelder*, 173 Mass. 258. The same considerations answer the argument that due faith and credit are not given to the judgment in Illinois.—The tax does not deprive the plaintiff in error of any of the privileges and immunities of the citizens of New York. It is no such deprivation that if

she had lived in New York the tax on the transfer of the deposit would have been part of the tax on the inheritance as a whole. See *Mager* v. *Grima*, 8 How. 490; *Brown* v. *Houston*, 114 U. S. 622, 635; *Wallace* v. *Mayers*, 38 Fed. Rep. 184. It does not violate the Fourteenth Amendment. See *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283. Matters of State procedure and the correctness of the New York decree or judgment, apart from specific constitutional objections, are not open here. As we have said, the question whether the property was to be regarded as *in transitu*, if material, must be regarded as found against the plaintiff in error.

Decree affirmed.

Mr. Justice WHITE dissents.

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